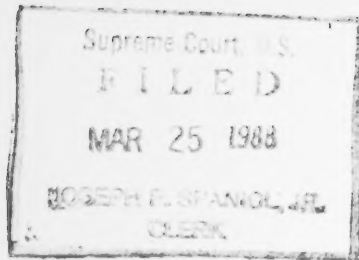


87-1782



No.

IN THE
SUPREME COURT OF THE UNITED STATES

April Term

VICTOR L. GANOE, THOMAS A. GANOE,
EDWIN A. GANOE, DANIEL K. GANOE,
SANDRA I. GANOE COLLAR, MARY GANOE PRICE,
CHERIE GANOE LODESTRO and CLEO GANOE SMITH
Maternal heirs of HOWARD R. HUGHES, JR., Deceased,
and WILLIAM A. JONES as authorized Agent and
Representative of 300 Paternal Heirs
of HOWARD A. HUGHES, JR.

Petitioners

vs.

WILLIAM LUMMIS, Temporary
Administrator of the Estate of HOWARD
ROBARD HUGHES, JR.

Respondent

Petition for the Writ of Certiorari to The
United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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280 PM

QUESTION PRESENTED

Whether the United States Court of Appeals, Second Circuit, wrongfully affirmed the Judgment of the United States District Court for the Southern District of New York awarding sanctions against Petitioners, totaling \$12,500.00, pursuant to Rule 11, and dismissing the Complaint for lack of jurisdiction in violation of the 5th and 14th Amendments of the United States Consitution.

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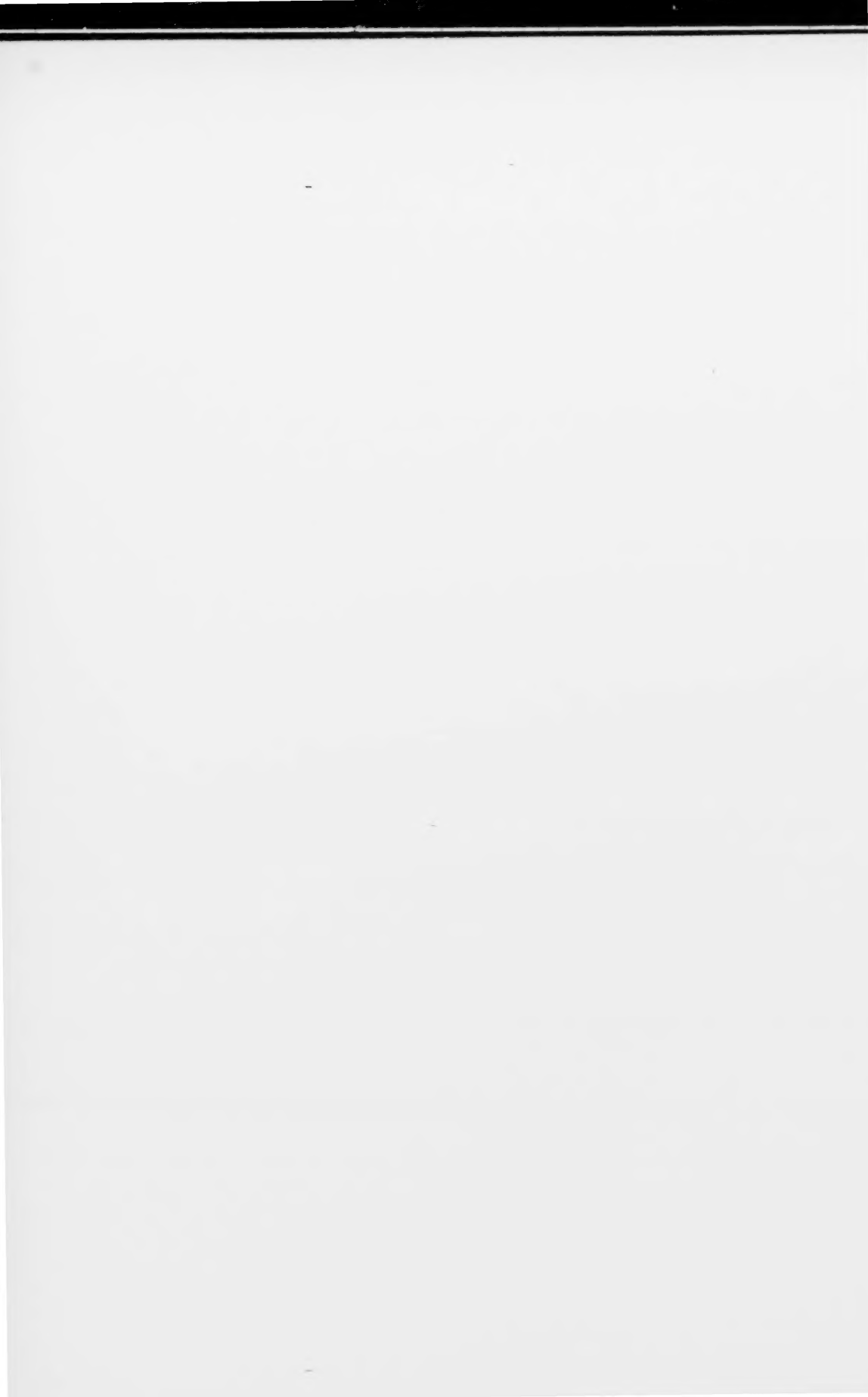
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PETITION FOR WRIT OF CERTIORARI

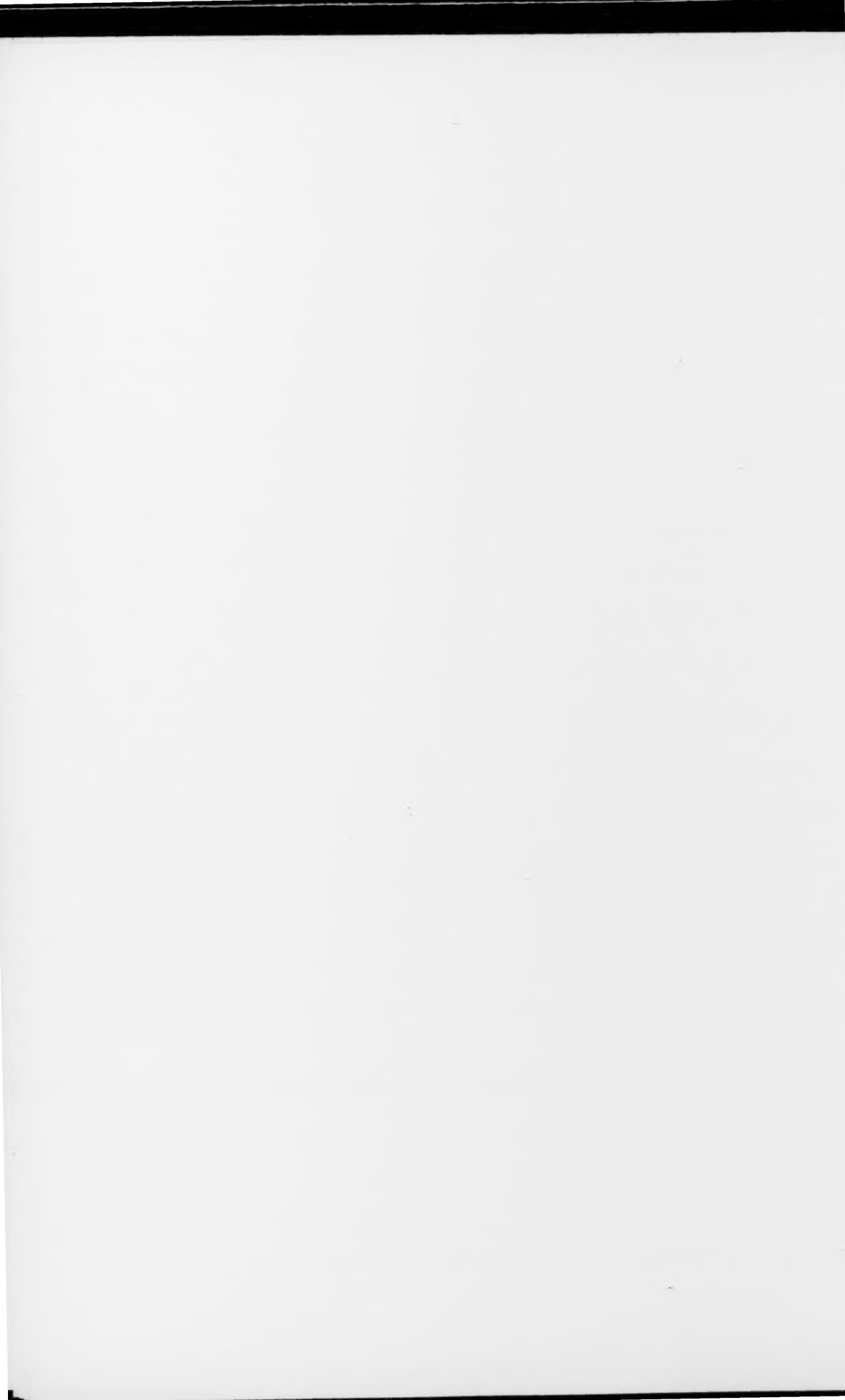
The Petitioners herein respectfully pray that
this Court grant a Petition for Writ of Certiorari
seeking review of the Order of the United States Court
of Appeals, Second Circuit, entered in this action
January 28, 1988, which affirms the judgment of the
United States District Court for the Southern District of



New York awarding sanctions against Petitioners,
totaling \$12,500.00, pursuant to Rule 11, and dismissing the Complaint for lack of jurisdiction in violation of the 5th and 14th Amendments of the United States Constitution.

OPINIONS BELOW

The United States Court of Appeals, Second Circuit, affirmed the decision of the United States District Court for the Southern District of New York (See Appendix B) on the 28th day of January, 1988, (See Appendix A).

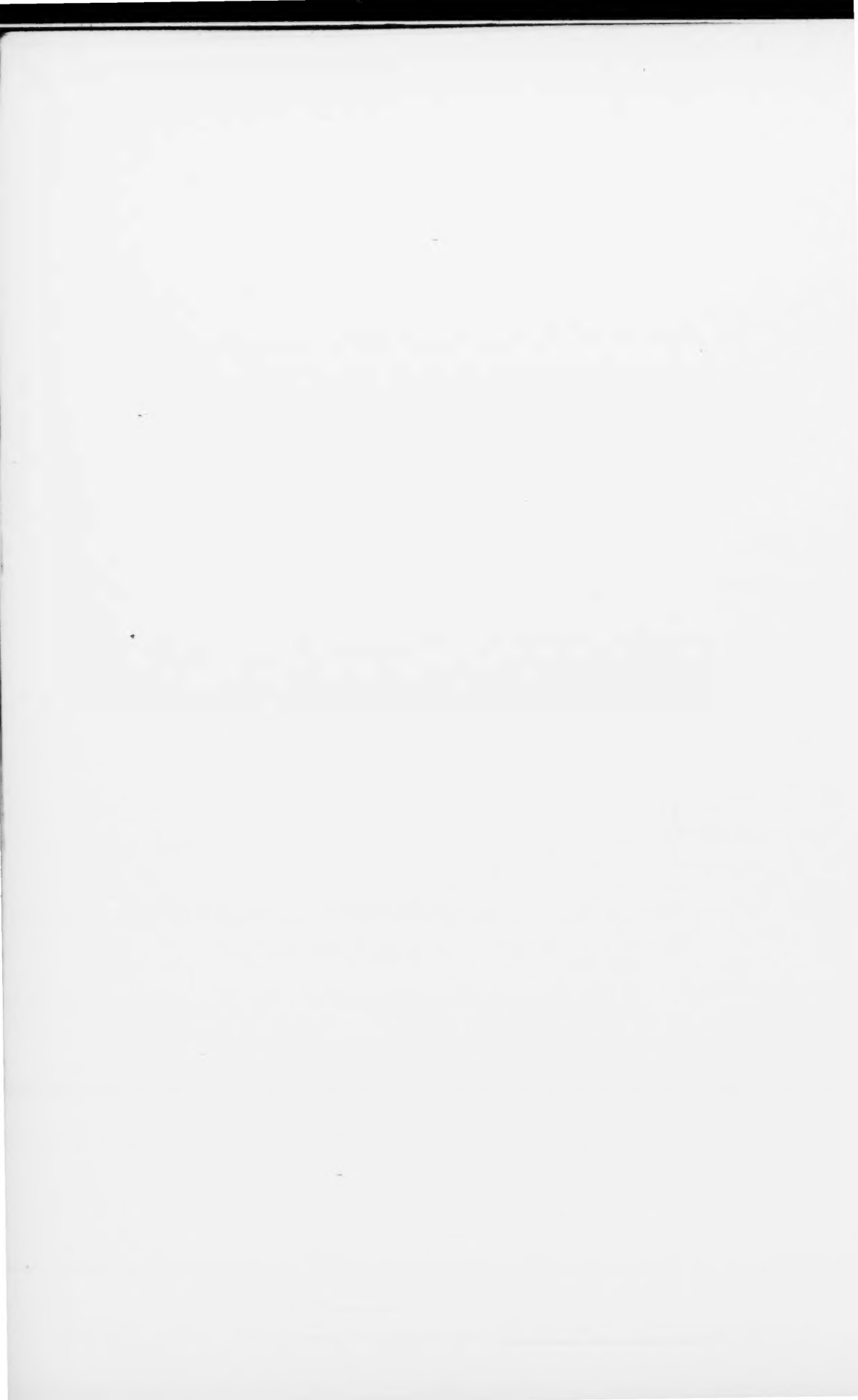


JURISDICTION

This Court does have jurisdiction under the rules of this Court as well as under the 5th and 14th Amendments of the United State Constitution.

The United States Court of Appeals, Second Circuit, by its decision of January 28, 1988, erroneously affirmed the judgment of the United States District Court for the Southern District of New York, which not only imposed sanctions against Petitioners, but also dismissed the complaint for lack of jurisdiction. By so doing, the Court denied the Petitioners their right to "due process" and "equal protection of the law".

"The United States Court of Appeals erred in not accepting the motion as contained in Appendix C for filing and determination."



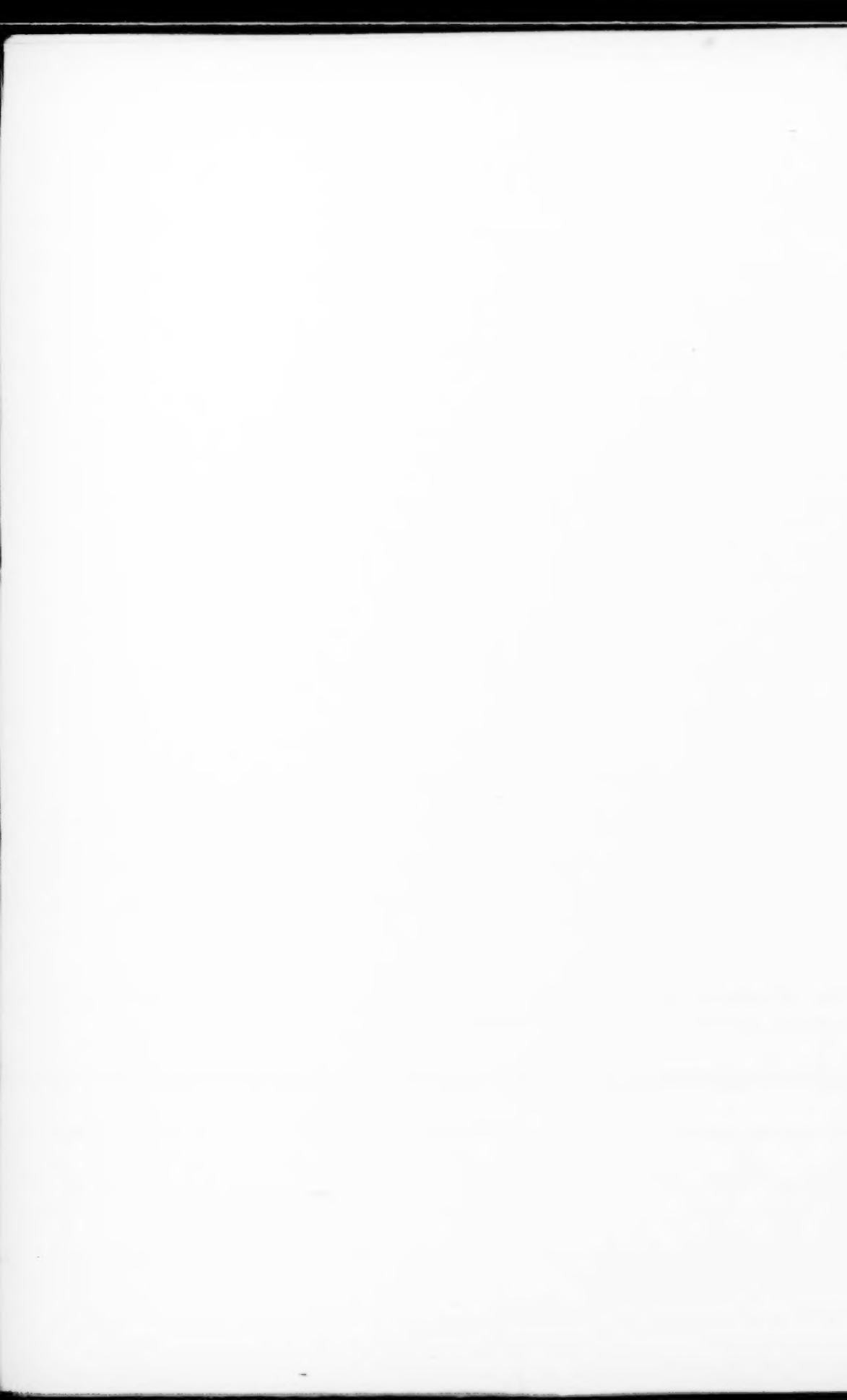
PROVISIONS OF LAW INVOLVED

United States Constitution - Amendment 5

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution - Amendment 14

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."



Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions. . . . "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

STATEMENT OF THE CASE

The order of the US District Court for the Southern District of New York and the Order of affirmation by the US Court of Appeals, Second Circuit, was erroneous.

The within action was commenced by the filing of a Summons and Complaint with the Clerk of the United States District Court, Southern District of New York, on June 20, 1986. The complaint alleges that the Respondent, together with the Courts in Texas and Nevada and the Attorneys involved, violated the rights of the Petitioners to "due process" and "equal protection of law" under both the Fifth and Fourteenth Amendments of the United Constitution. (Citing Appellants Exhibits, Pages 1-5 being part of the Record, J.A. Pgs. 20-24).

- That as a matter of fact, immediately after the Decdent died, on April 8, 1976, secret, conspiratorial agreements were entered into by and between the Respondent herein, as well as various Attorneys repre-



senting the said REspondent herein, and Probate Court NO. 2, Harris County, Houston, Texas, itself; that the said Agreements predetermined, among other things, who the heirs were going to be and how the Estate was going to be divided, percentagewise, and between the "GANO" and the "HUGHES" side of the family. (Citing Appellants' Exhibits, Pages 56-112 being part of the Record.).

That further, and most judicially grotesque, was a further Agreement, wherein money was given to various Attorneys by the Respondent who supposedly were to oppose the position of the Respondent, his Attorneys and the Court, as embodied in said secret agreements at the Heirship Hearings in both Harris County and Clark Probate Courts.

That said Agreements were totally unknown to the Petitioners herein, as well as to numerous others; and as a metter of fact, the Respondent and his Attorneys as well as said Courts, on numerous occasions since the death of the Decedent on and through the proceedings of Heirship, misrepresented too many relatives of the



Decedent and to Petitioners that they were completely dispassionate as to how the Estate would be divided and that everyone would share therein, and that 50% would go to the "HUGHES" side of the family and 50% to the "GANO" side.

That at the time of making such secret agreements and such misrepresentations, the Respondent knew such concealment and representations were false.

That the said Petitioners and many other relatives relied on such representations and spent much time and expense in travel, attorneys fees, investigative fees, etc.

That as a result of the fraudulent concealment, as well as such misrepresentations, and the utter lack of "due process" in the conduct of the hearings, they would have pursued other remedies in order to secure a fair, impartial and just hearing on the question of Heirship and a fair and honest administration of the Estate herein; that the said hearings took place in 1981 and 1983 - 5 to 7 years after the execution of



said agreements - and resulted in all parties to said agreements being declared the sole heirs.

That further at all the times hereinafter mentioned at to date, the said REspondent, his Attorneys and the said Courts of Texas and Nevada, are still committing acts of misfeasance, malfeasance and non-feasance in the administration of the Estate herein and totally ignoring the Constitutional rights of the Petitioners herein; that said Respondent has been and still is, acting negligently and carelessly, not only in relation to the marshalling of the assets therein, and the accounting thereof; that the said Respondent has stated from the time of the Decedent's death, that the Estate was worth \$168,000,000.00, and then later \$468,000,000.00, when in actuality the Estate is worth billions of dollars.

That further, the said Respondent and said Courts failed to legally notify the Petitioners herein of the Heirship hearings, both in Harris County in 1981, and Clark County in 1983.



That as a result of the premises, the said Petitioners have been substantially damaged and injured herein.

The relief demanded in the Complaint was as follows:

1. Opening and vacating all orders and judgments entered and granted relating to the Administration of the Estate of Howard R. Hughes, Jr. particularly as to the Heirship Proceedings herein.

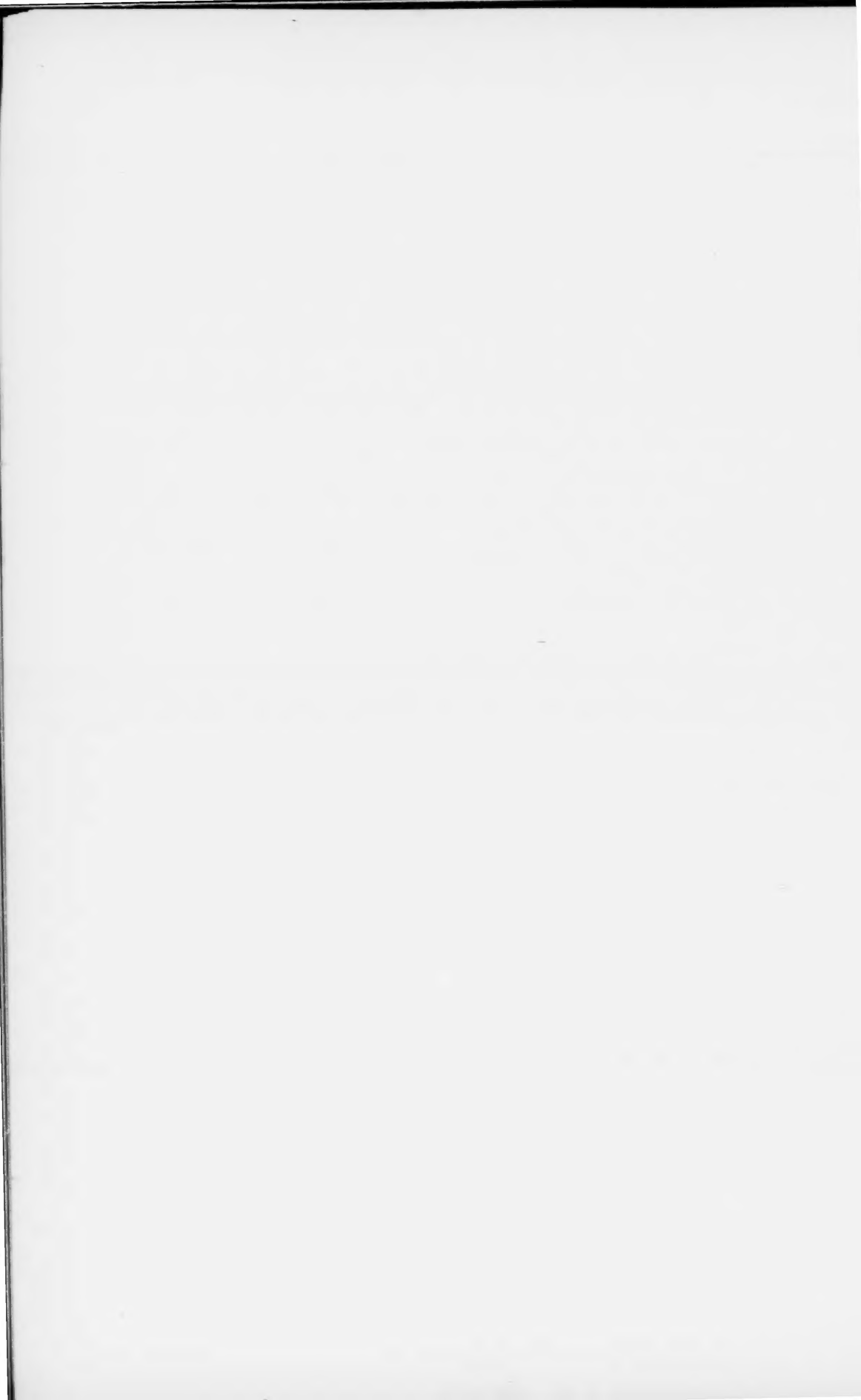
2. Allowing the Petitioners herein to have a full and complete hearing on their respective claims before this Court.

3. Enjoining distribution of any of the assets of this Estate.

4. Complete audit and accounting of the assets and income of this Estate.

5. Judgment for the just share Petitioners are entitled to in the minimum amount of \$2,000,000,000.00.

The Respondent then moved to dismiss the Complaint herein for lack of jurisdiction on or about



August 28, 1986. The Respondent claimed a lack of both subject matter and personal jurisdiction as well as improper venue. Said Respondent also asserted, in effect, that as a matter of law, Decedent was survived by closer relatives than the Petitioners herein. Further, the Respondent moved for sanctions under Rule 11. Petitioners cross moved for the dismissal motion. (Citing Appellee's Notice of Motion and Affidavits, part of Record herein, J.A. Pgs. 25-39).

The theory that Respondent set forth for sanctions was that the within lawsuit was "vexacious" and a "strike" suit and the Petitioners not only pursued remedies in the State of Texas, but later started a further action in Supreme Court, Erie County, subsequently, the within lawsuit in Federal Court was commenced. Petitioners contend that not only do they have the rights to pursue every possible remedy that is available to them but that their actions are meritorious and based upon years of investigation supported by affidavits as well as innumerable documents and evidence.



The said motions were submitted to the Court without a hearing and said Court reserved decision until June 4, 1987, when it granted Respondent motion to dismiss for lack of jurisdiction, denied Petitioners cross-motion for sanctions and granted a hearing on the question of fees and sanctions.¹

The Lower Court ruled that there was no subject matter or personal jurisdiction and relied heavily on Penzoil co. vs. Texaco, Inc., 55 U.F.L.W., 4457 and invoking the "Abstention" doctrine herein.

"Further, the lower Appellate Court failed to accept the motion as contained in Appendix C for filing and determination."

¹That the sanction hearing was held before Judge Ward on June 12, 1987, and he assessed Attorneys fees against Counsel and the Petitioners **GANOES** jointly and severally in the amount of \$7,500.00 and against William A. Jones, Individually, in the amount of \$5,000.00, upon which an Order and Judgment was entered July 7, 1987.

REASONS FOR GRANTING THE WRIT

- A. There has been a complete denial of Due Process and other Constitutional rights violated with the imposition of Sanctions.

Counsel submits that the imposition of sanctions against Petitioners in the Lower Court was a violation of "due process" and "equal protection of the law" under both the 5th and 14th Amendments of the United States Constitution.

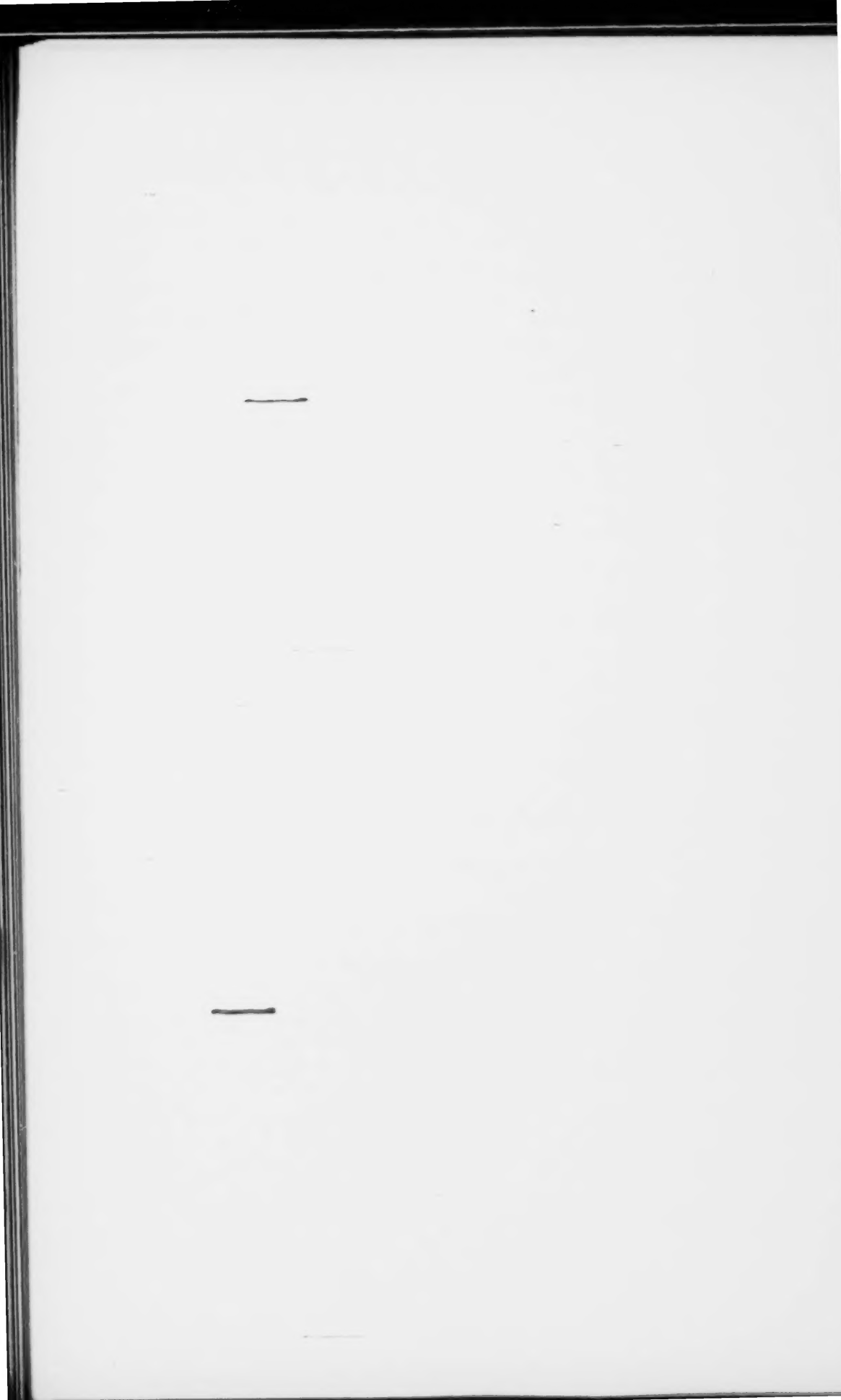
The right of every citizen to have unfettered access to our Courts is both part of our very form of government and guaranteed by the United States Constitution. The Lower Court not only abridged this right but also violated the rights these Petitioners have under the 5th and 14th Amendments to the Constitution.

Further, Counsel urges that Rule 11 is in and of itself an unconstitutional Rule and should be stricken down as such.

While I know that this Court is not bound by the rulings of State Courts, Counsel wishes to call to

the attention of the Court that sanctions in this case were not even imposed in the Courts of Texas where this very Estate is being administered during Petitioners legal action there. Further, Judge Kasler of the Supreme Court of the State of New York, in that action, denied a motion for sanctions and besides, while the New York State case was still pending, the State Court of Appeals in **MATTER OF A.G. SHIP MAINTENANCE**, ____ N.Y. 2d ____ (December 18, 1986) ruled that no Court in New York can impose sanctions.

Further, Counsel for the Respondents has previously asked for sanctions before HON. THEODORE S. KASLER, a Justice of the Supreme Court, Erie Court, New York, in the case before said Court involving the Petitioners GANOE against the Respondent herein which sought damages on the grounds of fraud of the Respondent as well as negligence of the Respondent in marshaling the assets of said Estate; the same question was not only thoroughly brought before that Court but considered equally thoroughly by the Court and unequivocally denied



by it; even though opposing Counsel pounded his first on the Counsel table, stating, "We want these Plaintiffs stopped. We want a decision today!"; that the said Judge reserved decision anyway.

That while the said Court dismissed the action for lack of jurisdiction it did not rule that the GANOE Petitioners, who were the only Petitioners in that Supreme Court Action (the 300 Paternal Heirs were not parties thereto) were not heirs, even though one-half of opposing Counsel's argument, with large charts and all, pertained to that issue; and the other half of his argument was devoted to jurisdiction and sanctions; that further, as stated previously, he denied the motion for sanctions; that in other words, two of the three issues brought before the Court were denied by said Court and Respondent's Motion was granted on the sole issue of jurisdiction.

That Counsel appealed Judge Kasler's Order to the Appellate Division, Fourth Department, that is the Order of said Judge dismissing the action for lack of jurisdiction.

That based upon the denial of sanctions by said Court, the Court has ruled that the action was not "frivolous and vexacious" but brought in "good faith" and implying that the action is meritorious. Even if, as opposing Counsel indicated in his papers, which of course we disagree with, the State Court action is "res judicata" or "collateral estoppel" as far as the within Federal Court action is concerned, then certainly so is the issue of sanctions.

That all of the action brought were in "good faith". That based upon all of the Court documents, it is clear that the proceedings during the administration of this Estate have not only violated the Civil rights of the Petitioners and denied them "due process" and "equal protection" of the law under the 5th and 14th Amendments of the Constitution of the United States, but on the fact of such Affidavits, the said Respondent, the Texas Courts, other State Courts and the Attorneys involved including the Attorneys for the Estate herein certainly are, to say the least, on the brink of

criminal conduct. .

That the Motion brought by opposing Counsel wherein papers upon papers are foisted upon this Court, are so submitted as a "smoke-screen" to cover up all the wrong doing and conspiratorial "secret" dealing that they have been involved in to insure the extreme monetary benefit of the chosen few.

That on the contrary, any motions or pleadings brought by the Respondant to cover up, in "Watergate" style, can only have been brought in "bad faith" by said Respondent, which very well should result in sanctions against said Respondent. These Petitioners, all of whom filed legitimate claims to the Estate immediately after the death of HOWARD R. HUGHES, JR. have been trying to seek redress and justice in the Courts of Texas and other Courts, but to no avail.

The GANOES, brought a motion asking that the Heirship proceedings and determination be reopened because they were not properly and legally notified as to such proceedings nor the date that they were to

appear before Harris County Probate Court, No. 2, JUDGE GREGORY; that said Judge ultimately by decision dated, August 16, 1985, and Order dated, August 30, 1985 (P. APP Pages 17, 18, 18a-18c) reopened the Heirship determination but in the same Order granted a Cross Motion for summary judgment denying a hearing, ruling that the said GANOES were not close enough in relationship; that while he opened the door, he shup it in the same Order; that Cousel submits pedigree and relationship has always been a question of fact based upon the testimony of lay witnesses and also on the expert testimony of genealogists; that the Court is fully aware that if there is an issue of fact, summary judgment cannot be granted and the Probate Court should not have ruled thus.

That on top of this, even though the Affidavits of both WILLIAM MILLER, ESQ. and THOMAS SCHUBERT, ESQ. indicate that the GANOE Petitioners also received due consideration by the Court of Appeals and the Supreme Court of the State of Texas, the contrary is absolutely true; that your Deponent appealed the Order of



JUDGE GREGORY (P. APP, Pages 19) within the thirty (30) days allowed under Texas law but failed to file a one thousand dollar (\$1,000) bond within said thirty (30) day period (What is a \$1,000 bond when you're talking about an Estate in the billions?); that actually the bond was filed on time because the Order was mailed to your Deponent and three (3) days more are given under Texas rules and extends that time; that the Court of Appeals dismissed the Appeal, anyway, solely on that ground and never considered the merits of the Appeal at all; that the Supreme Court affirmed and also dismissed the Appeal on that technicality; that the writ of certierari to the Supreme Court of the United States was denied in view of the fact that it merely involved interpretation of State rules.

That because of the magnitude of this Estate there is no justice in Texas and even the Texans involved in this Estate will be the first to claim this.

That besides the lack of "due process" and "equal protection of the law" as well as a violation of

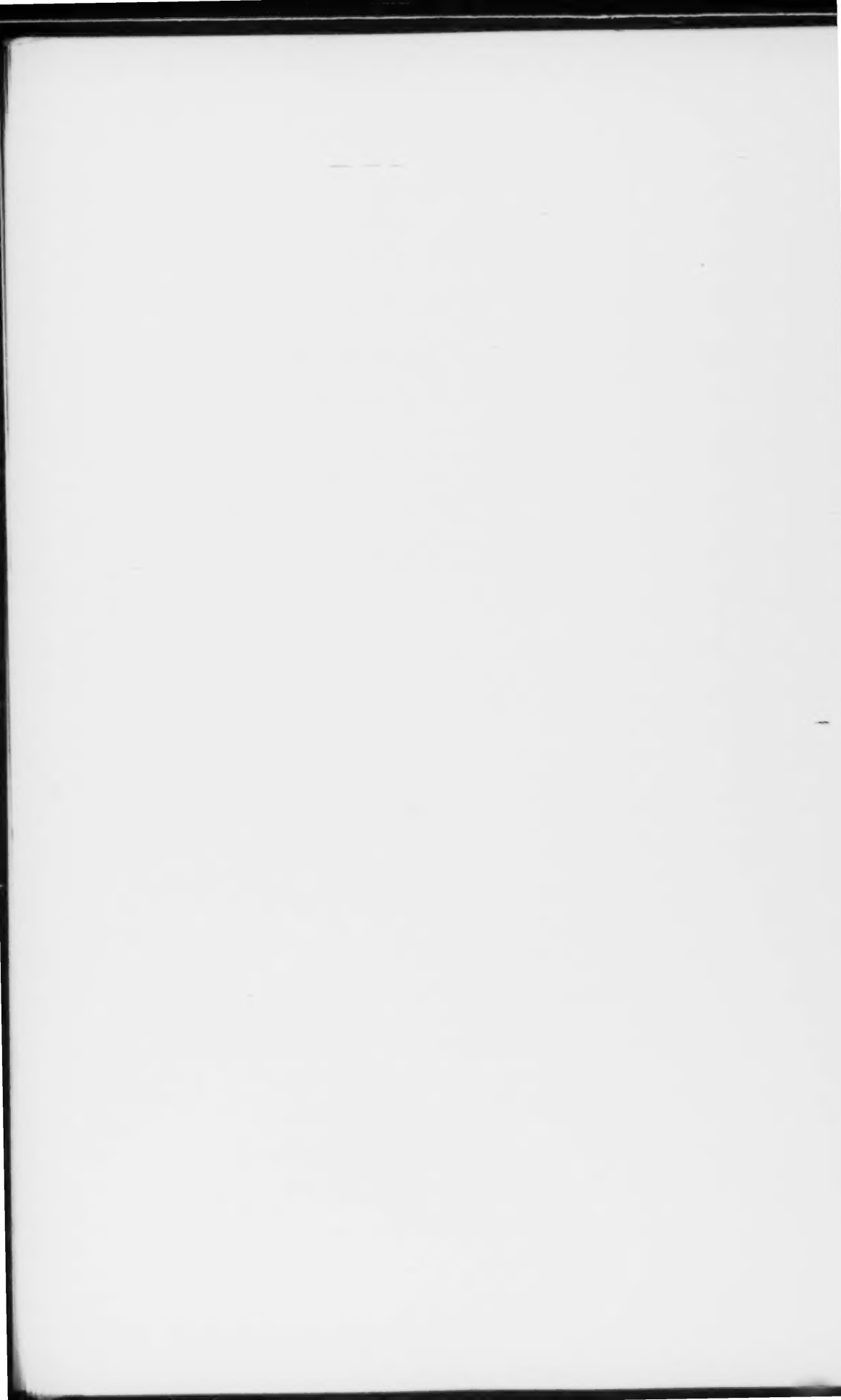


the Civil rights under the United States Constitution involving the lack of notice and lack of hearing to the GANOES as well as the affirmance of such lack of "due process" by the Texas Appellate Court, the following demonstrates the Constitutional violations which took place:

a) In June and July of 1976, two (2) months after the Decendent's death on April 5, 1976, the said Respondent in concert with his Attorneys, other Attorneys, the Probate Court in the State of Texas, as well as in other States, secretly conspired to draw up an Agreement as well as supplementary Agreements, by and between the twenty-one (21) persons that were 5 - 7 years later declared to be heirs by JUDGE PAT GREGORY, Probate Judge, Harris County, Houston, Texas (P. APP, Pages 56-112); that those Agreements provided for the illegal splitting of the Estate as far as the total percentage required to both the maternal and paternal sides of the HUGHES family and what individuals were going to receive an interest in such Estate; that proof

can be presented to this Court that these Agreements were "secret" and unavailable to anyone until 1985, some ten (10) years after the death of HOWARD R. HUGHES, JR.; that said Agreements were procured by your Deponent in the summer of 1985, only after he was able to psychologically compel WILLIAM MILLER, ESQ. to give him a copy of same; that they claimed that the Agreements were filed all along in the Surrogate's Court but no one could ever get access to them; that now that the "cat was out of the bag" and your Deponent obtained same, the Attorneys for the Estate claimed that they were never "secret" and even make these Agreements part of their exhibits and readily submit them to this Court.

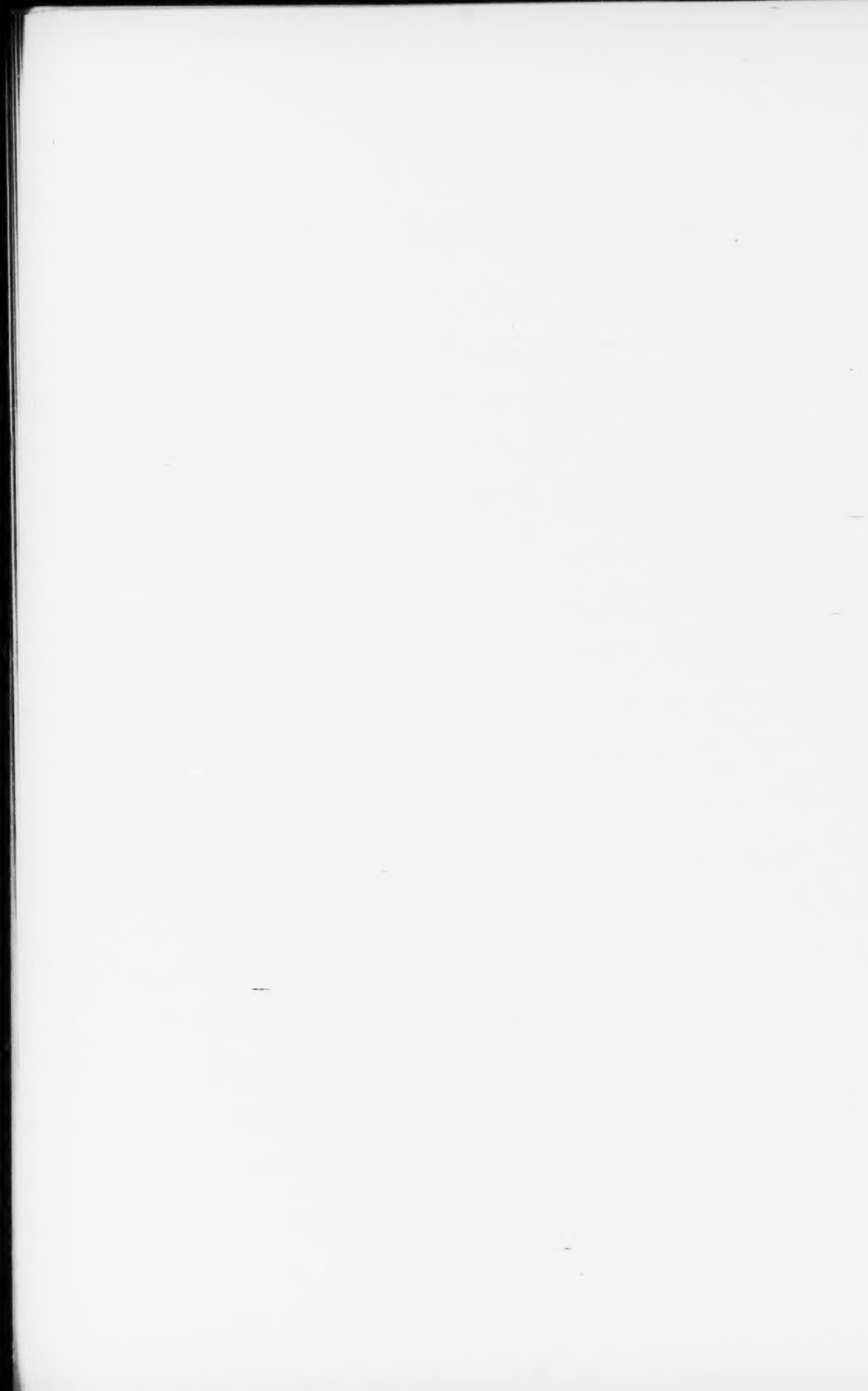
b) That 5 - 7 years later, Hearings held before JUDGE PAT GREGORY in 1981 and by JUDGE MENDOZA, in Clark County, Las Vegas, Nevada, 1983, were held in spite of such Agreements and without anyone, who tried to appear and present their claims to such Courts, knowing about them; that the Order of JUDGE GREGORY, on November 13, 1981, and by JUDGE MENDOZA, in January,



1983, determined the heirs to be the exact twenty-one (21) people who signed the "Secret Agreements."

Has Your Honor, in all his years in the practice of law as well as on the Bench, ever heard of a hearing or trial being held when long before it was already determined what the outcome of that hearing of trial was going to be?

c) That this was an intentional, calculated conduct, devised to assume full control of the HUGHES fortune by a few and to exclude all others who filed legitimate claims in this Estate right after the death of HUGHES and who are the legitimate heirs, from having a fair and impartial hearing and finally foreclosing them from obtaining any share therein; that the Petitioners herein spent much time and expense thinking that when they were going to Houston for this Hearing in 1981 that they were going to be heard by a fair and impartial Judge and jury and be afforded "due process" and "equal protection"; that the Affidavits attached hereto demonstrate the abhorrent and unjust way that



they were treated (They did not appear in the Nevada Court because heirs were determined without a hearing).

d] Not only did the Judge give Petitioners less peremptory challenges but even allowed the representative of a client of the Estate Attorneys, to wit; Exxon, Inc., to sit on a jury.

e] That the same Judge issued a "gag-order" but released prejudicial remarks of his own in favor of the Estate during the "trial" and allowed those on the side of the Estate to issue as many releases to the Press as they wanted to, but at the same time, threatening the opposing side with jail if they violated said "gag-order".

f] That the Attorneys for the State and the Court knew that at least one (1) Attorney was representing Claimants on the one hand while at the same time doing business for the Estate and the Attorneys for such Estate on the other.

g] That the Respondent, the Court and the Attorneys for the Estate stated many times that they did

not care how the Estate would be divided or among whom, knowing full well that the "Secret Agreements" already established, who was going to inherit; that they also said that the Estate would be divided pursuant to Texas law - 50% to the Maternal side and 50% on the Paternal side; that they violated Texas law anyways and gave approximately 75% to the Maternal side and only 25% to to the Paternal side.

h] When AVIS and RUSH BISSEL and the CAMERONS were determined to be heirs by JUDGE MENDOZA in the 1983 "Hearing" in Las Vegas, Nevada, they were actually determined to be heirs without trial or hearing pursuant to one of the "Secret Agreements" herein; that they are the only heirs on the HUGHES side and are not related at all, by blood or otherwise; that all three (300) of the Petitioners are related to HOWARD R. HUGHES, JR. by blood, ranging from first cousin to lesser degrees and the GANOES are also related on the maternal side. Was it just or "due process" that not only the division between maternal and paternal sides was

in violation of Texas law but that the 25% is going to go to individuals that are not related by blood or otherwise to any degree?

i] To show this Court how corrupt this alliance, including the Respondent, was and is, Counsel submits that Merrill-Lynch of New York City did an inventory of the Estate shortly after HUGHES died for the benefit of the IRS and came out with a bottom line figure of one hundred and sixty eight million dollars (\$168,000,000) when the HUGHES fortune had been valued in 1967 to be thirty two billion dollars (\$32,000,000,000); that even with all of the influence that the Respondent and all his Attorneys and the Court had in high places of government, the IRS disallowed that appraisal but accepted an almost equally bad an appraisal that the Estate was worth four hundred and sixty eight million dollars (\$468,000,000), which again is a "farce"; that there was nothing in the inventory as to the property located in Mexico, the Bahamas, England, Nicaragua, Canada, even though it is common knowledge



that there was property owned in these countries; for example, The Grande Bahama Hotel, Hughes Tool Corporation in Ireland, Hughes Aircraft, Hughes Helicopter, and, of course, the Summa Corporation; that in one of the Agreements it specifically states that, "The Respondent is the sole shareholder of Summa Corporation because he is the sole administrator of the HOWARD R. HUGHES, JR. Estate."; that there is nothing in the inventory listing Summa Corporation as an asset, let alone its considerable worth; that vast property and land was purchased in and around Las Vegas, Nevada, because at that time the United States was going to allow the manufacture of the Concord Airplanes and the Decendent was going to fly millionaires from all around the world in these planes to Las Vegas in order to make Las Vegas another gambling and show-place capitol of the world, such as Monaco and other places; that none of this land is included in the so-called inventory nor are all the hotels and gambling casinos that he owned in Las Vegas, Nevada, included; that the inventory

valued one gambling casino at one dollar (\$1.00).

That none of these other inventories have been submitted to the Court by opposing Counsel; only the one where the bottom line was said to be \$168,000,000; the submission of a false inventory itself is a fraud on the Court.

j] That the Estate settled a claim with TERRY MOORE, who could not have possibly been the wife of HOWARD R. HUGHES, JR., at the time of his death, for what she claims was a two million dollar (\$2,000,000) settlement; that they did this also without the knowledge of any of the Petitioners herein or others.

That the list of violations of the Civil rights of the Petitioners herein and the total lack of the right to "due process" and "equal Protection of the law", which were committed by the Respondent in concert with his Attorneys and the Courts of Texas and Nevada and particularly with JUDGE PAT GREGORY, can go on and on.

Rule 11 and its amendment in 1983, was promulgated to expand the equitable doctrine permitting the Court to award expenses including Attorneys fees to a litigant whose opponent acts in bad faith in instituting and conducting litigation. But this applies to all pleading and motion abuses.

The amendment stressed the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard under the rule is one of reasonableness under the circumstances. KINEE VS. ABRAHAM LINCOLN FEDERAL SAVINGS AND LOAN ASSOCIATION, 365 F. Supp. 975.

The rule is not intended to chill the attorney's enthusiasm or creativity in pursuing factual or legal theories and the Court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring as to what was reasonable to believe at the time of the pleading, motion or other papers submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as, how much time

for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion or other papers; whether the pleading, motion or other papers were based on a plausible view of the law; or whether he depended on forwarding Counsel or another member of the Bar.

The Rule does not require a Party or an Attorney to disclose privileged communication or work product in order to who that the signing of the pleading, motion or other papers substantially justified. The provisions of Rule 26(c), including appropriate orders after "in camera" inspection by the Court remain available to protect a party claiming privilege of work protection.

That Suzlick vs. Rothschild Securities Corp., (1984), 741 F. 2nd, 1000, the Court of Appeals rules that attorneys fees awarded under Rule 11, be reversed because subjective bad faith had not been shown. In Gieringer vs. Silverman, (1984), 731 Fed 2nd, 1272, the Court of Appeals, although granting summary judgment,

denied attorneys fees under Rule 11 on the grounds that there was no clear evidence that the claims made were entirely without colorable merit.

The Respondent, in asking for sanctions, rings in that same refrain that the Petitioners claims are "vexacious" and "frivolous"; that was the refrain in Texas and that was the refrain in Supreme Court, Erie County and that is the refrain in the Federal Courts.

When agreements have been reached in which no one but the Parties themselves have been given notice thereof, nor have the Petitioners and others been invited to negotiate and participate in such an agreement and five (5) non relatives are agreed to be heirs, are the claims of the Petitioners "vexacious" and "frivolous" when they did not participate or enter into such agreements and are related in whatever degree, as opposed to those who are not related at all!

When the Probate Court ordered Attorneys from the State of Texas to come to Buffalo for depositions, did that Court really feel that the claim was "frivolous";

that when the same Court agreed with the Petitioners GANOE that they were not legally notified of the Heirship Proceedings and reopened them (but immediately closed them in the same breath), did that Court consider the claim "frivolous" and "vexacious"!

When the Petitioners GANOE found that the proceedings were reopened and closed at the same time only because those agreements and heirship determination were going to be carried out to whosever detriment and at all costs, was it "vexacious" and "frivolous" for those citizens of our State to look to their own Courts and bring an action for fraud and negligence so that their meritorious claims could be heard and full redress ordered!

When the Supreme Court, Erie County made no ruling that the Petitioners GANOE were not heirs and denied sanctions, did that Court believe that that action was "frivolous" and "vexacious" in dismissing only on technical State, jurisdictional grounds!

Can this action before this Court be called

"vexacious" and "frivolous" when it is based upon ten (10) years of investigation, lengthy Affidavits of only a handful of innumerable witnesses, documentation, etc., as well as the Memorandum herein, and much more exhaustive evidence can be submitted on a trial herein, all with the view of rectifying denial of Constitutional rights herein!

Counsel submits that any requests for sanctions by the Respondent should have been denied but, on the other hand, the Respondent, knowing that what is submitted herein on behalf of the Petitioners, gives this Court a strong foundation to determine "bad faith" on the part of said Respondent, his Attorneys, the Court and others. The Petitioners herein have gone literally through millions of dollars of expense over the last 10 years in attempting to undo the fraud, negligence and constitutional violations that have been heaped upon them.

In conclusion, based upon the above, Counsel contends that the rights of Petitioners to "due process"

and "equal protection of the law" under the 5th and 14th Amendments of the United States Constitution were violated in the imposition of the sanction herein and, further, the Rule 11 should be declared unconstitutional.

- B. There has been a complete denial of Due Process with the Lower Court's Order dismissing the Complaint for lack of jurisdiction.

The Lower Court under its heading at Page "5" of its order states that the "Probate Exception" applies in the instant case.

First, the said "exception" states that the Federal Court has no jurisdiction to probate a will or to administer an estate. This we do not disagree with and we are fully familiar with the "probate exception". However, we are not asking this Court to do so. We are asking this Court to order and direct the Respondent, the Texas Probate Court, because of its wrongdoing towards the Petitioners and others, to start "de novo" by holding Heirship Hearings which do not make a

mockery of justice and are not conducted as previously so, in violation of civil rights, "due process" and "equal protection of law", under both the 5th and 14th Amendments of the United States Constitution; and to give these Petitioners full and fair notice of such proceedings and to afford them the opportunity to have a full, complete and fair hearing or trial, wherein all of their witnesses can testify and all of the documentary evidence can be presented; that we are also asking this Court to direct the Respondent to stop any and all distribution of the Estate until these Hearings are concluded and a determination is made as to who the true heirs are; and further, to allow them an accounting of all of the assets and liabilities of this Estate. We are not, as is anticipated by the "probate exception", asking all proceedings to be transferred to this Court and for this Court to administer such proceedings in such Estate; although the Court can undertake certain Estate issues herein according to the authorities herein.

The case of Sutton vs. English, 246 US 199,

states that questions relating to the interest of heirs, devisees and legatees or trusts effecting such interests which may be determined not interfering with probate or assuming general administrations, are within the jurisdiction of the Federal Courts where the diversity of citizenship exists and there is the requisite amount in controversy.

In O'Callahan vs. O'Brien, 199 US 89, it states that the Courts of the United States in administering the rights of citizens of other states or aliens will enforce state law, statutory or customary, giving to its citizens of that state in an action of suit, the right to question the probate of a will or to said probate in a suit of equity.

In McLellan vs. Carmen, 217 US 268, the Court stated that the chancery jurisdiction of the Federal Courts embraces a suit where the requisite diversity of citizenship exists, where the State Probate Court had the Petitioners adjudicated to be the heirs at law and next of kin of a decedent. In this case, the Court

goes one step further and allows adjudication as to who the rightful heirs of a decedent are.

Further, in Lawrence vs. Nelson, 143 US 215, the Court held that the Circuit Court of the United States has general equity jurisdiction to administer as between citizens of a deceased person within its jurisdiction.

Pain vs. Hook, 5 Wal 425, states that Circuit Courts in the United States have over matters of administration and probate and are bound to exercise it if the bill, according to revered principles of equity states a case for equitable relief. (See also, Yonley vs. Lavender, 21 Wall 276; 22 L. Ed. 536).

At any rate, Counsel submits that our case comes under these authorities and not barred by the "probate Exception" and does not come within its principles. We must ask this question: If a State Court, a respondent and others are violating the legitimate rights of its citizens in Estate proceedings, can it be said that the Federal Court cannot redress

such wrongs because of the so-called "probate exception" when the State Courts won't redress such wrongs? The so-called "harmonious cooperation" of state and federal tribunals ends where violation of Constitutional rights begin.

Then citing Page "6" of the Lower Court's opinion, the Court states that there are no Federal questions because the "due process" and "equal protection" clause limit only the power of government and that a showing of state action is required to constitute a violation of those Constitutional rights.

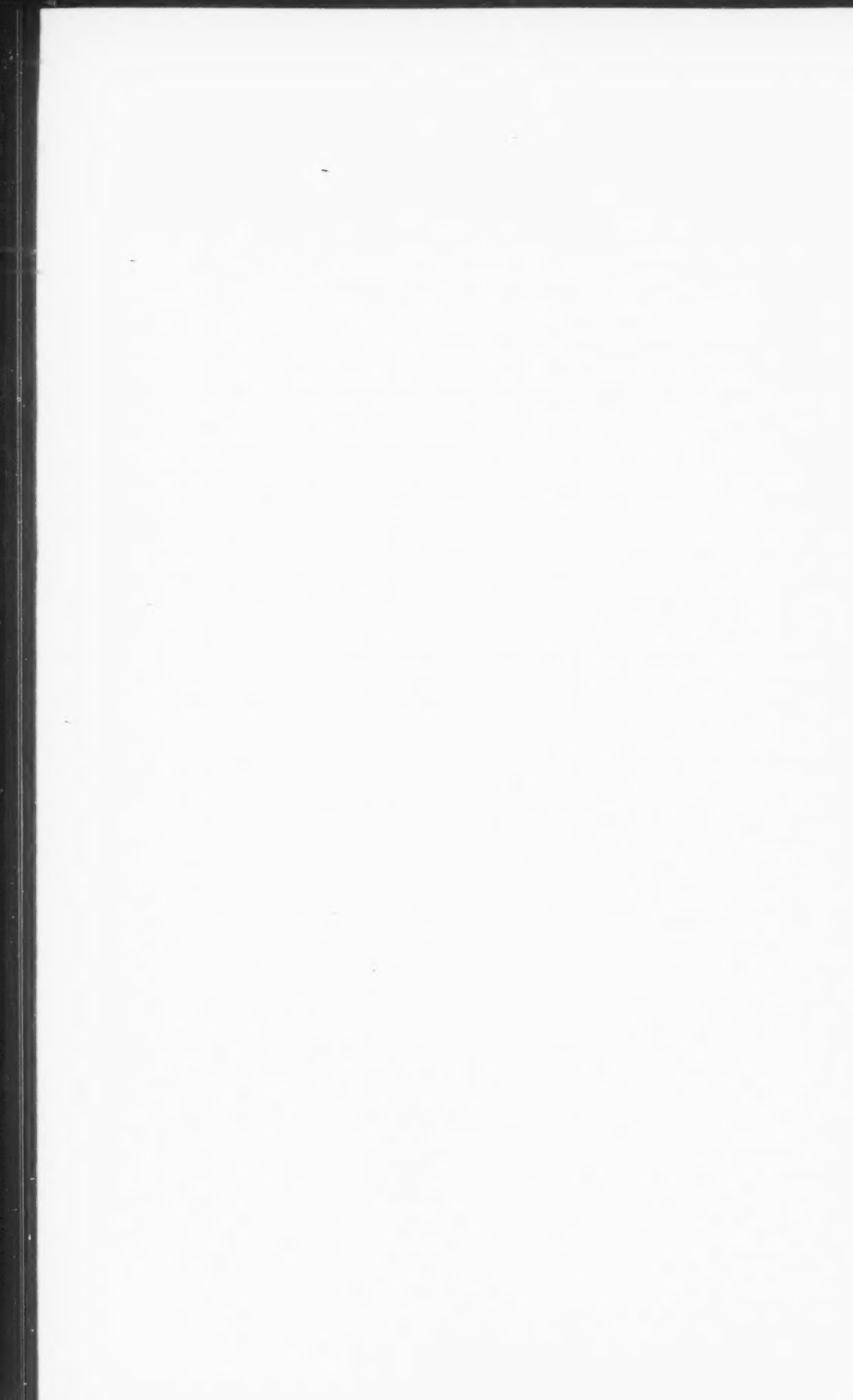
First, that may be true generally with regards to the 14th Amendment but not as to the 5th Amendment of the United States Constitution. However, even if it were true that it applies to both amendments, there are numerous United States Supreme Court decisions that state in substance that if the "private" conduct and "governmental" conduct become so "closely entwined" then the 14th Amendment is properly applicable to such conduct. Evans vs. Newton, 382 US 296, Moose Lodge vs.

Irvis, 407 US 163, Thurston vs. Wilmington Parking Authority, 365 US 715, Gilmore vs. Montgomer, 417 US 556, Andrew vs. Martin, 375 US 399.

The cases are also authority for the test employed to determine if there is governmental involvement; that by sifting the facts and weighing the circumstances such determination can be made.

We strongly urge under the above authorities that the violation of "due process" under the 5th and 14th Amendment "equal protection" was committed by the Respondent in concert with the Courts of Texas and Nevada, the duly appointed Guardian ad Litem and other Attorneys, including the attorneys for the Estate herein which demonstrates that the "governmental" action is truly intertwined with the private conduct of the Respondent herein.

Then, the Court states at Page "7" of its opinion that "even if we can equate Lummis' action with those of the State, the doctrine of "Abstention" would preclude this Court from hearing Plaintiff's complaint."



The Court relies heavily on Penzoil Co. vs. Texaco, Inc. 55 USLW 4457, which was decided after the commencement of the within action, for its conclusion on this point. Counsel strongly submits that such case does not apply to our case in question for the following reasons:

Texaco commenced the Federal lawsuit while the appeal in the Texas State Court was still pending and when they did not raise the constitutionality of the Texas Rule of Civil Procedure pertaining to a stay pending appeal and the application thereof by the Texas Court.

2. The opinion of the Justices are so mixed and varied, especially in their divergent views as to whether the doctrine of "Abstention" should or should not apply, that the most that can be said is that the law on same is still very much unsettled and that each case must depend upon its own facts.

3. That Texaco was attacking a rule and application thereof which, on its face, did not appear to be unconstitutional. In our case, we are in essence



claiming and alleging a conspiratorial fraud involving, not only the Respondents, but their attorneys, other attorneys and the Texas State Courts themselves, which would not only be unconstitutional and illegal, but to say the least, on its facts, should cause the doctrine of "Abstention" not to be invoked.

These points are the main difference between the Penzoil case and the case at hand.

For the same reasons, "comity" under Younger vs. Harris, 401 US, Page 44, also cited by the Lower Court, would not mandate the invocation of the principle of "Abstention".

Citing Page "8" of the Lower Court's opinion, the Court held that Petitioners have not adequately alleged diversity jurisdiction.

A perusal of the complaint would indicate for the purpose of pleading that there are sufficient allegations concerning that issue, especially when viewed in conjunction with the basis of jurisdiction from which was filed with summons and complaint herein



which sets forth the specific addresses of Petitioners and the address of the Respondent and the civil cover sheet.

In any event, any lack of specificity could certainly be cured by a demand for a Bill of Particulars or by a Motion for amendment, especially when Federal pleadings are so liberally construed and do not require that you set forth evidentiary matters.

Then the Court, at Page "9" of its opinion delved into the demonstrated personal jurisdiction over the Respondent herein. The Court cites the ruling of Justice Theodore S. Kasler, relative to his decision (Page 10(a) - 10(c) of Appellants Exhibits which are part of the record) that the Supreme Court of Erie County lacked in subject matter jurisdiction to entertain the positive action. Justice Kasler ruled thus on the following grounds:

1. That Howard R. Hughes, Jr. died a non-domiciliary of the State of New York.
2. That he did not own any real or personal

property or other assets in the State of New York.

3. His Estate was administered in a foreign forum by fiduciaries appointed or acting on behalf of the Estate in that same forum and not in New York.

Based upon those factors alone, the Lower Court ruled that there is "absolutely nothing to connect the Courts of this State with the foreign administration of the Estate of Howard R. Hughes, Jr." (Record, Pages 525-526, J.A. Pg. 89).

The affidavits of WILLIAM A. JONES, of Houston, Texas, who was an investigator employed by approximately 300 heirs on the paternal side of the family, and who was, not only involved all during the administration of this Estate from the very time that Howard R. Hughes, Jr. died, April 5, 1976 to date, but was also present during all of the heirship proceedings (Citing Cross-Notice of Motion, Jones affidavit, Pages 1-10 of Record, J.S. Pgs. 96-105) demonstrate that there is jurisdiction in New York State. Also, the affidavit of Robert Hughes who is a second cousin to the Decedent



and who acted as agent for 184 other paternal heirs and who also had acted as such from the very time of Decedent's death to the present time and also attended the heirship hearings (Citing Cross-Notice of Motion, Hughes affidavit attached thereto of Record, J.A. Pgs. 100-110) supports jurisdiction here. Counsel's affidavit which contained numerous documents and Exhibits were submitted to the Lower Court indicating that the Decedent did and does now own property and assets in the State of New York, not only at the time of his death but to the present time; that said Exhibits also demonstrate that Decedent, as well as the Defendant, have been "doing business" in the State of New York and continues to do so, all of which confers jurisdiction in the Lower Court. (Citing Cross-Notice of Motion, Grisanti affidavit Pages 1-10 of Record, J.A. Pgs. 111-120, and Appellants' Exhibits, Pages 20-55, of Record, J.A. Pgs. 121-154.)

Can anyone with the mass accumulation of wealth and assets scattered throughout the world which

belonged to the Decedent and now belongs to his Representative, Respondent, do any business without "funneling" such transactions through New York City, the financial capital of the world? The said Exhibits herein speak for themselves as far as the jurisdictional issue is concerned.

Based upon such Exhibits, as well as the law relating to Section 302 of the CPLR, there are more than "sufficient contacts" between the Respondent and the State of New York to confer jurisdiction upon our Courts.

Section 302 CPLR provides, in part, as follows:

a. Acts which are the basis of jurisdiction.

As to a cause of action arising from any of the acts enumerated in this section, a Court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or service

in the state; or

2. commits a tortious act within the state, except as to cause for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to a person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicit business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses real property situated within the state.

First, opposing Counsel argued in the Lower Court that because the Respondents are fiduciaries, they

are not liable for the acts or their principal, who in this case would be Howard R. Hughes, Jr., Decedent; and he cited a 1920 case Helmi vs. Buckelin, 229 NY 363, as well as a 1971 Surrogate Court In Re: De Conellis, 66 Misc. 2nd 882; since that time, the "fiduciary shield doctrine" has been embodied in much more recent cases and Higher Court rulings.

The Court in Laurenzano vs. Goldman, 1983, 96 AD 2nd, 852, 465 NYS 2nd 7079, ignored the doctrine stating:

"The fiduciary shield doctrine is both equitable and flexible; where the Complaint alleges a violation of fiduciary duties, the doctrine will not automatically be applied to bar the acquisition of personal jurisdiction..."

That further, the Supreme Court of the United States, in Keeton vs. Hustler Magazine, Inc., 1984, 104 Supreme Court 1473 also ruled against the doctrine in strong language, by stating:

"We today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity."

And in Columbia Briargate Co. vs. First

National Bank, 1983, 713 F. 2nd 1052, the Federal Court stated:

"It does not appear logical or reasonable or even to comport with the legislative philosophy inherent in the long arm statutory procedure itself to hold that one may be held liable substantively for a tort he committed in his fiduciary role, in the forum state, but the Court of the forum state may not under its long arm statute require him to appear and defendant the suit arising out of that tort, in the forum state."

It is interesting to note that in the Keeton case (supra) a New York resident was allowed to sue Hustler in New Hampshire, even though it was clear to everyone that the only reason was because it had a longer statute of limitations on libel claims; that the only contact with New Hampshire consisted of the sale of 10,000 to 15,000 copies of the Magazine in said state.

In McKinney's Section 302, Supplementary Practice Commentaries, by Joseph M. McLaughlin, it was stated:

"While the defendant's activities in New Hampshire might not constitute "doing business" to

support jurisdiction over a claim unrelated to the business, Hustler Magazine were sufficient to permit jurisdiction in a libel action based on the contents of the magazine published in New Hampshire. No matter what forum the plaintiff selected, she could obtain only one damage award for all injury to her reputation suffered in all jurisdictions.

"The fact that the statute of limitations on a libel claim might have expired in every jurisdiction other than New Hampshire was irrelevant to the jurisdictional calculus because, as the Court had noted on an earlier occasion, "the issue is personal jurisdiction, not choice of law." Hanson vs. Denckla, 1958, 357 U.S. 235, 254, 78 S. Ct. 1228, 1240. Thus, jurisdictional inquiries should not be distorted by choice of law concerns.

Finally, the fact that Plaintiff was a resident of New York, not New Hampshire, while perhaps relevant, did not compel a finding of no jurisdiction. As the Court wrote, "we have not to date required permission to that State to assert personal jurisdiction over a nonresident defendant." 104 S. Ct. at 1480-81.

In a companion case, Calder vs. Jones, 1984, _____ US _____, 104 S. Ct. 1482, the court permitted the well-known actress, Shirley Jones, to sue in California, where the plaintiff resides. While it is clear that the Enquirer is subject to jurisdiction in

California, the individual defendants argued that they lacked the requisite "contacts" with California since the defamatory publication had been written and edited in Florida.

The defendants argued that suit in California would have a "chilling effect" upon reporters and editors. The Court, however, refused to permit First Amendment considerations to muddle the jurisdictional argument. "The potential chill on protected First Amendment activity stemming from libel and defamation actions is already taken into account in the constitutional limitations on the substantive law governing such suits...To reintroduce those concerns at the jurisdictional stage would be a form of double counting." 104 S.Ct. at 1488.

Jurisdictional problems in defamation cases are analyzed as in other tort cases. Under an orthodox long-arm jurisdiction analysis, the defendants were subject to "in personam" jurisdiction. The defendants intended to and in fact did cause tortious injury to

Miss Jones in California. To quote the court: "An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California." 104 S.Ct. at 1487.

That these decisions do not herald the demise of all territorial limitations upon personal jurisdiction became evident one month later. In Helicopters Nacionales de Colombia, S.A. vs. Hall, 1984, ____ U.S. ____, 104 S.Ct. 1868, the Court refused to sustain jurisdiction over a Colombian corporation with its principal place of business in the city of Bogota, Colombia. Four Americans were killed in a helicopter crash in Peru. Their survivors sought to sue the Colombian helicopter owner in Texas.

Parsing the contacts between the Colombian corporation and the State of Texas, the Supreme Court held that they were too few to support jurisdiction. The plaintiffs also made the interesting argument that if they could not sue in Texas, then, as a practical

matter, they could not sue at all and, accordingly, there should be "jurisdiction by necessity." The Court ducked that issue: "we decline to consider adoption of a doctrine of jurisdiction by existing law in the absence of a more complete record." 104 S.Ct. at 1874, n. 13.

Further, many federal cases have held that the "fiduciary shield doctrine", is inapplicable when it comes to tortious conduct:

See Agra Chemical Distributing Co. vs. Marion Laboratories, Inc., D.C.N.Y. 1981, 523 F. Supp. 699; Merkel Associates, Inc. vs. Bellofram Corp., D.C.N.Y. 1977, 437 F. Supp. 612, 619. The Second Circuit, however, has dismissed these cases as not expressing "the prevailing view", and in the Miller case, supra, would have extended the immunity to the defendant in a tort case, but for the fact that it had decided to pierce the corporate veil."

That at any rate, Counsel submitted the Exhibits and documents in the Lower Court, which showed



that we would have met the jurisdictional compliance with CPLR 302 (a)(1) and (3)(i)(ii); and further, that the cases indicate that very minimal "contacts" are required for the Court to obtain jurisdiction under the long-arm statute.

In the case of Prentice vs. Demag Materials Handling Limited, 1981, 80AD 2nd 741, 437 NYS 2nd 173 this Court sustained jurisdiction holding that the defendant should reasonable have expected the consequences in New York, and was also deriving sustantial revenue from interstate or international commerce. This is exactly what our contention is all about.

In the case at hand, the said Respondent knew that there was alleged heirs who were residents of the County of Erie and State of New York because of the fact that claims were filed way back in 1976 and Counsel has received official Court documents ever since that date to the present time and, therefore, the Respondent should "reasonably have expected" that "consequences" would have occured in New York State

damaging and injuring the Petitioners herein, as a result of the commission of fraud and negligence; that, further, it is common knowledge, as well as specifically alleged in the Affidavits of William Jones and Robert Hughes, that the said Respondent has been and are still deriving substantial revenue from interstate or international commerce.

In the case of Sybron Corporation vs. Wetzel, 1978, 46 NY 2nd 197 the Court of Appeals ruled under CPLR 302 (a)(3) that the New York Court had jurisdiction regarding a tortious act in New Jersey, which caused injury to a party in New York.

In Allen vs. Canadian General Electric Company, 1978, 65 AD, 2nd 39 the Appellate Division, upheld jurisdiction even though the Defendant never entered the State, but committed a tortious act outside New York that caused injury to the Plaintiff in this State.

In the Porcello case, cited by opposing Counsel, 85 AD 2nd 917, 4th Department, there was no

injury in New York and in the McGowan case, 72 AD 2nd 75, 4th Dept., also cited by opposing Counsel, there were absolutely no "contacts" whatsoever and the Court held that there must be an injury in New York.

In the Affidavits of Robert Hughes and William A. Jones a few of the "contacts" are set forth, including the continuing contracts for approximately \$1,000,000 per year with Merrill Lynch in the State of New York, the activities of Hughes Television Network, Inc., also based in the City of New York, the transactions with stocks involving TWA, Summa Corporation, and other corporations being handled in the City of New York by various brokers, one of which is Solomon and Sons.

Further, the affidavits and exhibits as set forth in Appendix C, particularly the excerpts from the book written by Susan Finstad, Assistant Attorney to the Guardian ad Litem appointed in the within estate, indicate that there have been sufficient "contacts" within the State of New York to grant jurisdiction to the lower court.

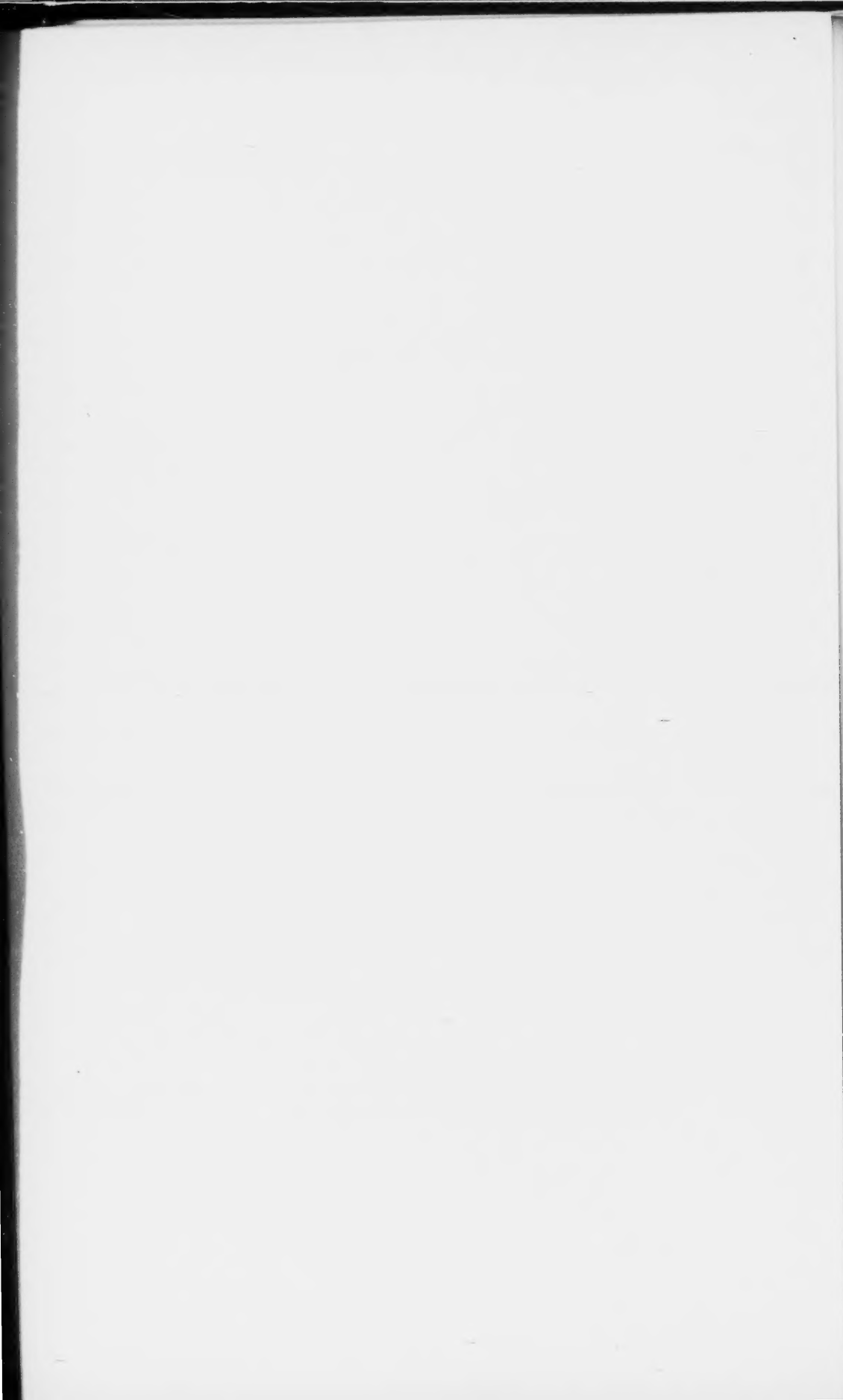
CONCLUSION

Petitioner respectfully submits that this is a case that is proper for review by Certiorari to the Supreme Court of the United States and they pray that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

S/R.D.B.

RICHARD D. GRISANTI
Attorney for Petitioners
Office & P.O. Address
577 Niagara Street
Buffalo, New York 14201
(716) 883-0400



PROOF OF SERVICE

RICHARD D. GRISANTI, ESQ., deposes and states that pursuant to Rule 28.3 of this Court he served this Petition for Writ of Certiorari on Defendant-Respondent by enclosing three copies of each thereof in an envelope, certified mail, return receipt requested, addressed to:

Alexander C. Cordes, of Counsel
PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER
Attorneys for Defendant-Respondent
Office & P.O. Address
3400 Marine Midland Center
Buffalo, New York 14230
(716) 847-7036

and depositing same in the United States mails at Buffalo, New York, on the 31st day of March, 1988.

Richard D. Grisanti
Richard D. Grisanti



PROOF OF SERVICE

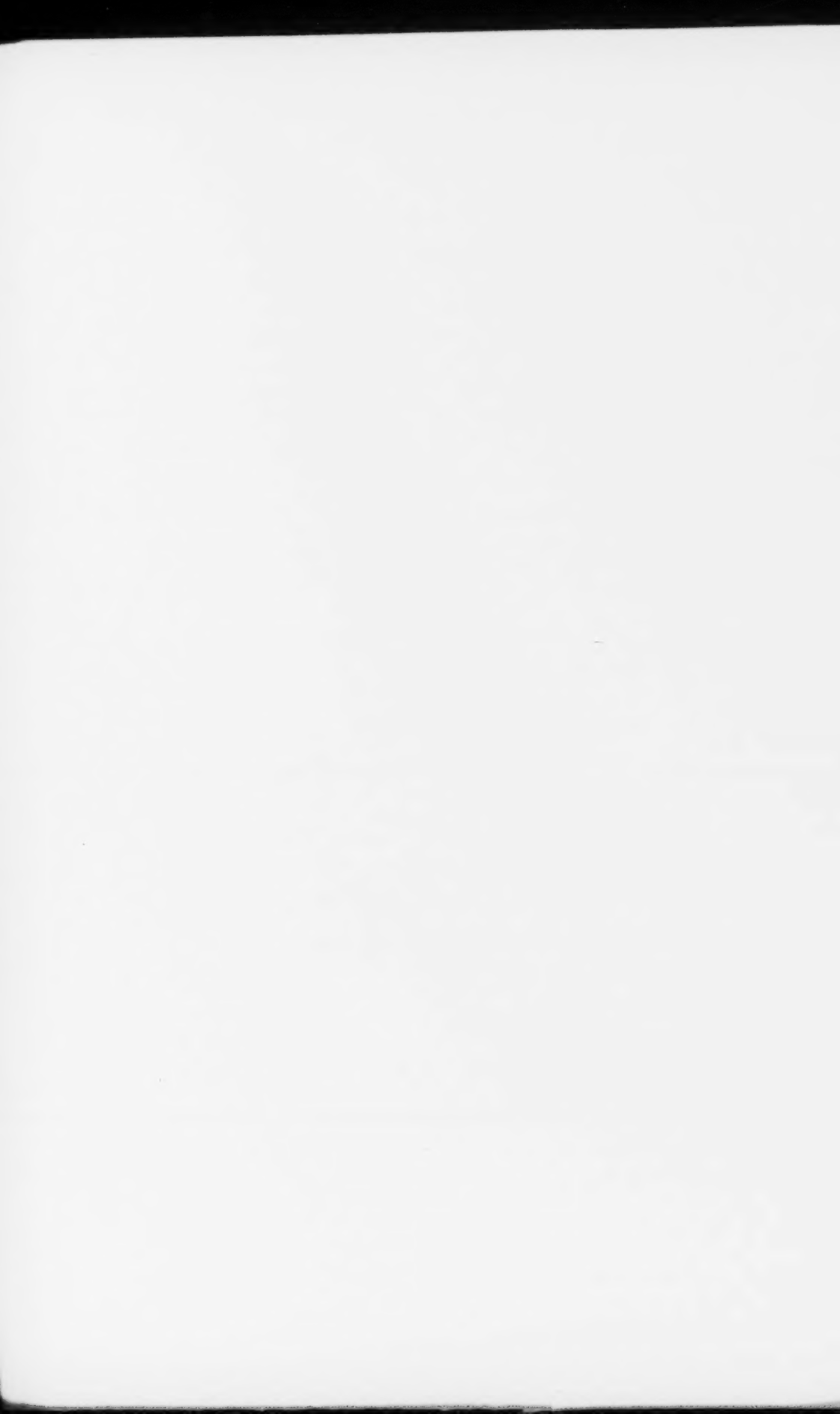
RICHARD D. GRISANTI, ESQ., deposes and states that pursuant to Rule 28.3 of this Court he served this corrected Petition for Writ of Certiorari on Defendant-Respondent by enclosing three copies of each thereof in an envelope, certified mail, return receipt requested, addressed to:

Alexander C. Cordes, of Counsel
PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER
Attorneys for Defendant-Respondent
Office & P.O. Address
3400 Marine Midland Center
Buffalo, New York 14230
(716) 847-7036

and depositing same in the United States mails at
Buffalo, New York, on the day of April, 1988.

A handwritten signature in dark ink, appearing to read "Richard D. Grisanti", written over a horizontal line.

Richard D. Grisanti



APPENDIX A

UNITED STATES COURT OF APPEALS

SDNY

FOR THE

86 cv 4859

SECOND CIRCUIT

WARD

At a stated Term of the United States Court of
Appeals for the Second Circuit, held at the United
States Courthouse in the City of New York, on the
twenty-eighth day of January

Present:	HONORABLE IRVING R. KAUFMAN,	UNITED STATES
	HONORABLE THOMAS J. MESKILL,	COURT OF
	HONORABLE AMALYA L. KEARSE,	APPEALS

Circuit Judges,

FILED

JAN 28 1988

ELAINE B.

GOLDSMITH,

CLERK

SECOND CIRCUIT

VICTOR L. GANOE, THOMAS A. GANOE, EDWIN A. GANOE, DANIEL K. GANOE, SANDRA I. GANOE COLLAR, MARY G. GANOE PRICE, CHERRIE GANOE LO DESTRO, and CLEO GANOE SMITH, Maternal Heirs of HOWARD R. HUGHES, JR., Deceased, and WILLIAM A. JONES, as Authorized Agent and Representative of 300 Paternal Heirs of HOWARD R. HUGHES, Jr., Deceased,

Plaintiffs-Appellants.

- v. -

WILLIAM LUMMIS, Temporary Administrator of the Estate of HOWARD ROBARD HUGHES, Jr.,

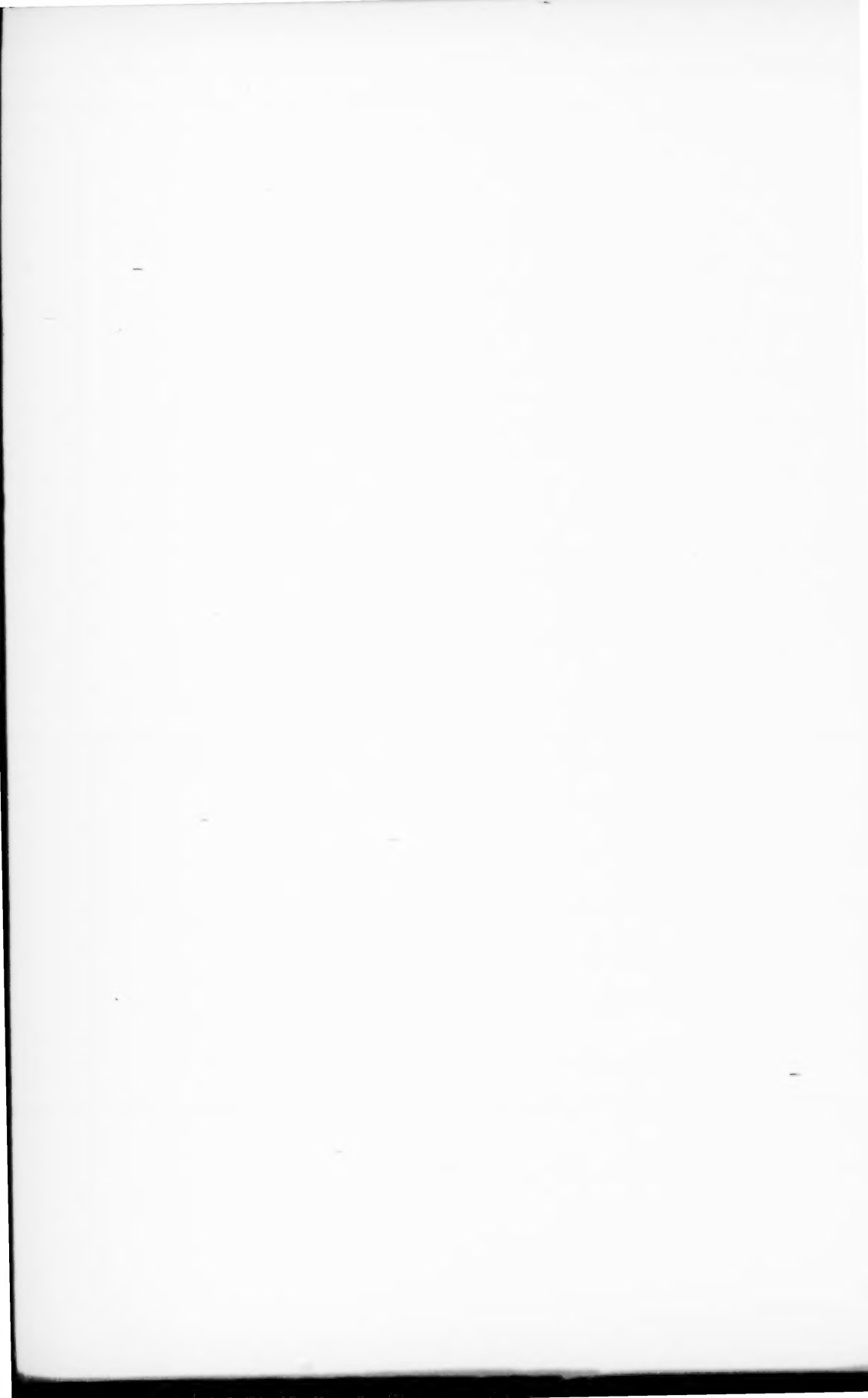
Defendant-Appellee.

Docket No.
87-7546

Appeal from the United States District Court
for the Southern District of New York.

This case came on to be heard on the
transcript of record from the United States District
Court for the Southern District of New York ,
and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby
ordered, adjudged, and decreed that the judgment of
said District Court be and it hereby is affirmed.



Plaintiffs Victor L. Gance, et. al., who claim to be heirs of the late Howard R. Hughes, Jr. appeal from a judgment of the United States District Court for the Southern District of New York, Robert J. Ward, Judge, dismissing their complaint against defendant William Lummis as temporary administrator of the Hughes estate, seeking the Gance, et al. v. Lummis, 87-7546

adjudication of their probate claims, the reopening of probate proceedings in Texas state court, the vacation of all orders and judgments entered in those proceedings, an accounting and an injunction against distribution of the Hughes estate's assets, and a share of the estate "in the minimum amount of" \$2 billion. The district court dismissed the complaint for lack of subject matter and personal jurisdiction, denied plaintiffs' motion for sanctions, and awarded Lummis sanctions against plaintiffs in the total amount of \$12,500. On appeal, plaintiffs renew the argument made in the district court with respect to jurisdiction, contending



that their action should not have been dismissed and that sanctions should not have been awarded against them, and they pursue their contention that Lummis's motion to dismiss was so lacking in merit as to warrant the imposition of sanctions against him. We have considered all of plaintiffs' arguments on appeal and, finding them to be without merit, we affirm the judgment of the district court substantially for the reasons stated in the Opinion of Judge Ward dated June 4, 1987 ("Opinion").

Given both the history of plaintiffs' pursuit of a share of the Hughes estate in courts outside of Texas and their presentations in this Court, we agree with the district court's view that the present litigation is vexatious and "displays astonishing ignorance of applicable substantive law, cavalier indifference to jurisdictional questions, and insolent disregard to binding judicial decisions[,]...amount[ing] to an arrogant and completely unwarranted imposition on the federal judiciary." Opinion at 13. We note that



following the receipt of Lummis's well founded motion to dismiss the present action, plaintiffs' attorney wrote Lummis's counsel seeking a settlement, threatening district court had ample basis for awarding sanctions against plaintiffs. Plaintiffs and their attorney are advised that further misuse of the judicial process may subject them to further sanctions, jointly and individually.

The judgment of the district court dismissing the complaint, denying plaintiffs' motion for sanctions, and granting defendant's motion for sanctions is in all respects affirmed.

N.B. THIS SUMMARY ORDER
WILL NOT BE PUBLISHED IN
THE FEDERAL REPORTER AND
SHOULD NOT BE CITED OR
OTHERWISE RELIED UPON IN
UNRELATED CASES BEFORE
THIS OR ANY OTHER COURT.

IRVING R. KAUFMAN,
U.S.C.J.

THOMAS J. MESKILL,
U.S.C.J.

AMALYA L. KEARSE,
U.S.C.J.



APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VICTOR L. GANOE, THOMAS A GANOE, :
EDWIN A. GANOE, DANIEL K. GANOE, :
SANDRA I. GANOE COLLAR, MARY G. :
GANOE PRICE, CHERRIE GANOE :
LO DESTRO, and CLEO GANOE SMITH, :
Maternal Heirs of HOWARD R. HUGHES, :
JR., Deceased, and WILLIAM A. JONES, :
as Authorized Agent and :
Representative of 300 Paternal :
Heirs of HOWARD R. HUGHES, JR., :
Deceased, :

Plaintiffs :

-against- :

WILLIAM LUMMIS, Temporary :
Administrator of the Estate of :
HOWARD ROBARD HUGHES, JR., :
Defendant. :

-----X

A P P E A R A N C E S

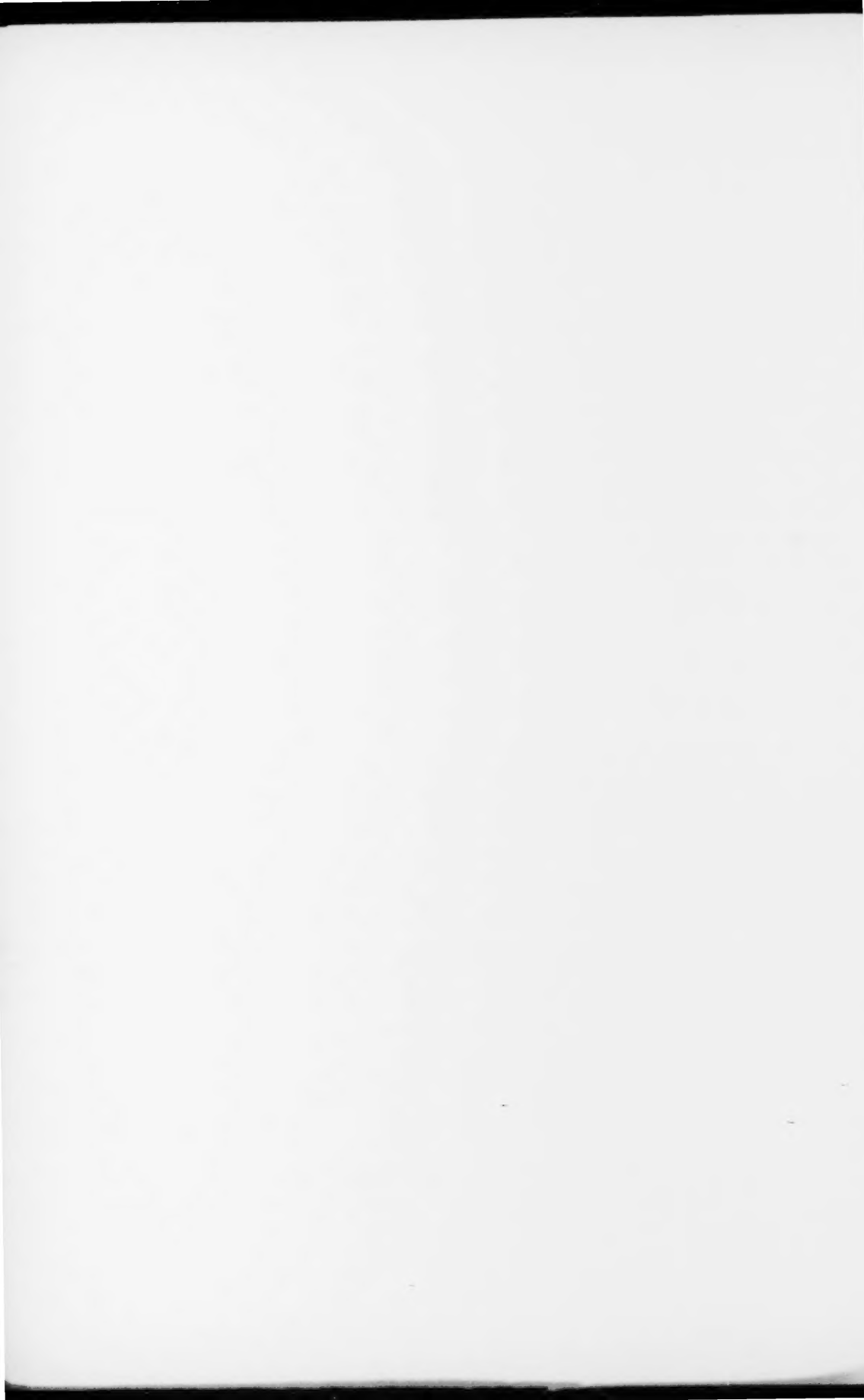
RICHARD D. GRISANTI, ESQ.
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Attorney for Plaintiffs

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER
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Buffalo, New York 14203
Attorneys for Defendant

ALEXANDER C. CORDES, ESQ.
ARTHUR M. SHERWOOD, ESQ.
Of Counsel

OPINION

86 Civ. 4859
(RJW)

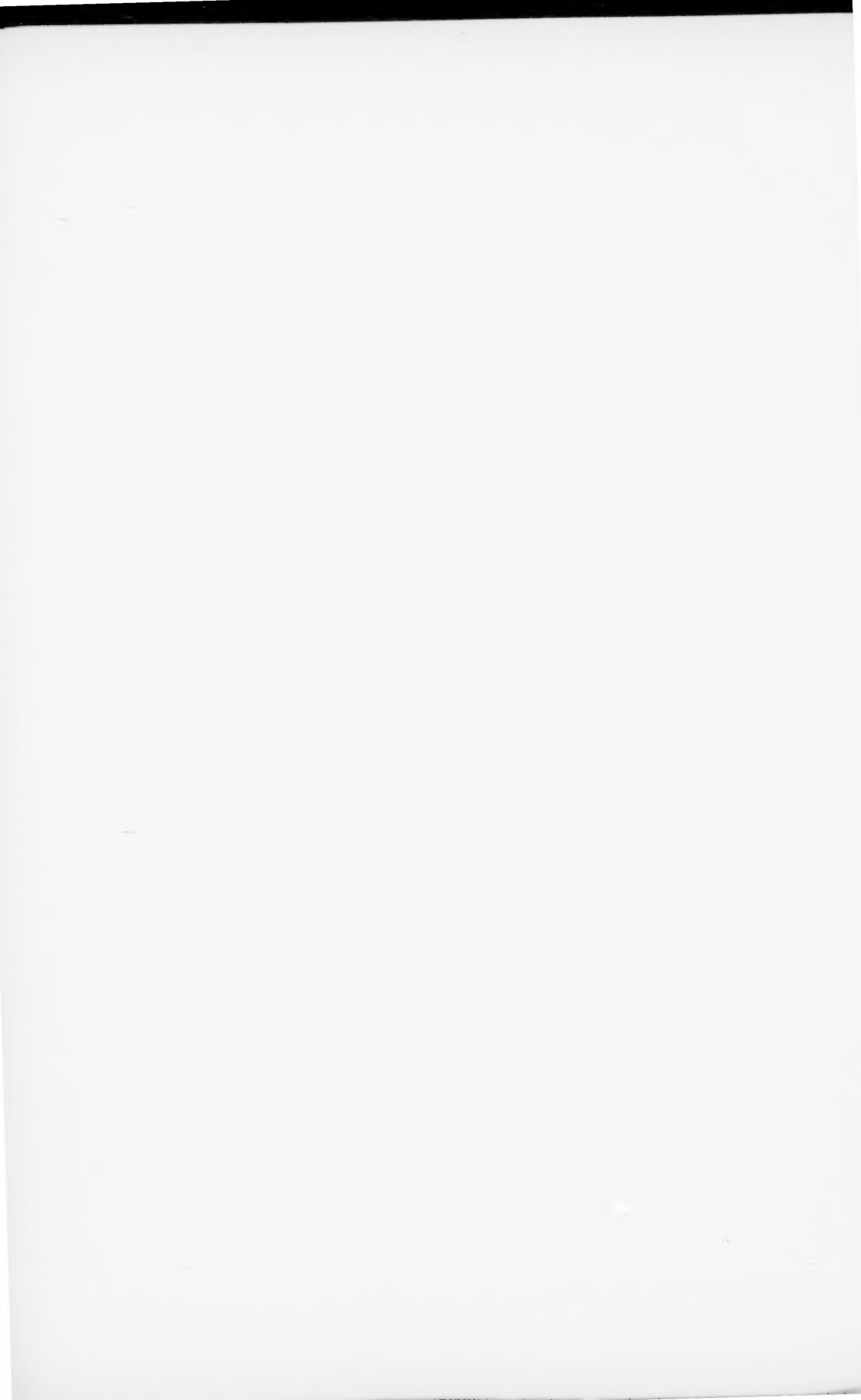


WARD, District Judge.

Plaintiffs, self-proclaimed "close relatives" of the late recluse billionaire Howard R. Hughes, Jr., have commenced this action seeking injunctive and monetary relief against defendant as fiduciary of the Hughes state on the grounds that defendant entered into a conspiratorial arrangement to determine the disposition of the estate by the Texas probate court. Defendant has moved to dismiss the action on all the grounds contained in Rule 12(b), Fed. R. Civ. P., and for sanctions under Rule 11, Fed. R. Civ. P. Plaintiffs have cross-moved for sanctions under Rule 11, Fed. R. Civ. P. For the reasons to follow, the Court grants defendant's motion to dismiss the complaint. That portion of defendant's motion seeking sanctions is adjourned pending a hearing on the application for fees. Plaintiffs' cross-motion for sanctions is denied.

BACKGROUND

Howard R. Hughes died intestate on April 5,



1976. On April 14, 1976, the Probate Court of Harris County, Texas (the "Probate Court") appointed defendant William R. Lummis and his mother Annette Gano Lummis Temporary co-administrators of the Hughes Estate. By a judgment dated April 10, 1987, the Probate Court determined that Howard R. Hughes had died a domiciliary of Texas, that a purported 1968 will was not valid, that the Texas Court had "the sole jurisdiction over the administration of Decendent's real and tangible personal property situate in this State and Decendent's intangible personal property wherever situate," and that "the laws of intestacy of the State of Texas are applicable as to Decendent's personal property, both tangible and intangible, wherever situated, and Decendant's Memorandum of Law in Support of Motion for Dismissal, Appendix 39-40 ("Defendant's App.")). Pursuant to its authority, the Probate Court appointed an attorney ad litem to represent the unknown heirs of the estate. The attorney ad litem sent letters to potential relations notifying them of the heirship

proceedings. Richard D. Grisanti, attorney for plaintiffs in the instant proceeding, received this notification. On August 14, 1981, four of the present plaintiffs filed in the Texas proceedings an affidavit and geneology claiming that they were paternal relations of Howard R. Hughes.¹

Beginning in July, 1981, the Probate Court conducted a four-phase proceeding to determine the rightful heirs of Howard R. Hughes.² A jury determined on September 4, 1981 that the paternal grandparents of Howard R. Hughes left three descendants who survived him. This finding excluded under Texas law any other paternal claimants who were unable to establish descent from Hughes' paternal grandparents. The jury specifically rejected a claim by a competing group of paternal heirs that Rupert Hughes, a deceased paternal uncle of Howard R. Hughes, had been impotent and could not have fathered his daughter, Elsbeth Hughes Lapp, the deceased mother of the three individuals finally determined to



be the paternal heirs. On November 13, 1981, the Probate Court entered a final judgment determining that only descendants of the grandparents of Howard R. Hughes were entitled to share in his estate as intestate distributees under applicable Texas law.

The Ganoë plaintiffs did not appeal from the Probate Court's final judgment, but nevertheless filed an original motion dated May 3, 1985 and an amended motion dated May 29, 1985 to reopen the maternal heirship proceedings and set aside the November 13, 1981 judgment. The Probate Court heard oral argument on the matter and reopened the proceedings. On August 30, 1985, the Probate Court granted summary judgment dismissing the claims of the Ganoë plaintiffs to be entitled to share in the Hughes estate. The Court of Appeals for the First Supreme Judicial District of Texas dismissed the appeal of the decision by the Probate Court for failure to file a bond. The Texas Supreme Court dismissed the application for a writ of error for want of jurisdiction.

Richard D. Grisanti next filed suit in the New York Supreme Court, Erie County, on behalf of the Ganoë plaintiffs and on behalf of William A. Jones who supposedly represents 300 paternal heirs of Howard R. Hughes. The complaint in that action alleged that the defendant entered a conspiratorial agreement to dispose of the assets of the Hughes estate and that the Texas courts illegally aided the conspiracy through a pattern of misfeasance, malfeasance and nonfeasance. The plaintiffs requested various monetary and injunctive relief. In a decision dated May 29, 1986, that court dismissed the case for lack of personal jurisdiction over Lummis.

Undeterred, plaintiffs' counsel filed the present proceeding alleging essentially the same facts contained in the complaint filed in the New York Supreme Court. Specifically, plaintiffs request this Court to

- 1) open the Texas probate proceedings to vacate all judgments and orders, particularly those in the heirship proceeding, 2) allow them a full and complete



hearing on their claims to the Hughes estate, 3) enjoin distribution of the assets of the Hughes estate, 4) order a complete auditing and accounting of the Hughes estate, and 5) grant them judgment, in the aggregate, of two billion dollars. Defendant has moved to dismiss the complaint and for sanctions. Plaintiffs have cross-moved for sanctions.

¹Plaintiffs Thomas A. Gano, Mary G. Gano Price, Cleo Gano Smith, and Cherrie Gano Lo Destro filed a submission in the probate proceeding claiming to be related through great, great, great, great, great, great grandparent Stephen Gano who had been born in France in 1652.

²In the first phase of the proceeding, the Probate Court determined the claims of any wives, children, brothers, sisters, or descendants of brothers and sisters, or parents of Hughes. In an order dated July 23, 1981, the Probate Court concluded that Hughes left no surviving wife, mother, father, child or descendent

thereof, brother or descendant thereof, or sister or descendant thereof. Defendant's App. 107. On August 10, 1981, the Probate Court commenced the second phase of the proceeding to determine the maternal moiety of Hughes' estate. The Probate Court next determined, with the aid of a jury, phase three, the heirship of the paternal moiety, except for the claims of Rush Hughes and Avis Hughes McIntyre. In the final phase, the Probate Court determined the claims of Rush Hughes and Avis Hughes McIntyre. Id. at 107-15.



DISCUSSION

I. Subject Matter Jurisdiction.

A. The Probate Exception.

A federal court has no jurisdiction to probate a will, administer an estate, or entertain any action that would interfere with probate proceedings pending in a state court or with its control over property in its custody. Markham v. Allen, 326 U.S. 490, 494 (1946); Celetano v. Furer, 602 F.Supp. 777, 779 (S.D.N.Y. 1985). The probate exception to federal jurisdiction clearly bars the Court from entertaining an application for much of the relief sought by plaintiffs. This Court may not vacate any judgments entered in the Texas Probate Court, enjoin distribution of the assets of the Hughes estate, order an audit or accounting of the estate, or order the estate to pay plaintiffs the sum of two billion dollars. See Dannhardt v. Donnelly, 604 F. Supp. 769, 800 (E.D.N.Y. 1985). Accordingly, the Court dismissed under Rule 12(b)(1), Fed. R. Civ. P., for lack of subject matter



jurisdiction, so much of the complaint as seeks this relief.

The probate exception does not, however, preclude a federal court from exercising jurisdiction to adjudicate rights to the property of an estate "where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." Markham v. Allen, supra, 326 U.S. at 494; Celentano v. Furer, supra, 602 F. Supp. at 779. As the Second Circuit Court of Appeals has stated:

The standard for determining whether federal jurisdiction may be exercised is whether under state law the dispute would be cognizable only by the probate court. If so, the parties will be relegated to that court; but where the suit merely seeks to enforce a claim inter partes, enforceable in a state court of general



jurisdiction, federal diversity jurisdiction will be assumed.

Lamberg v. Callahan, 455 F. 2nd 1213, 1216 (2d Cir. 1972). By this standard, "[i]t generally is not considered an interference with state proceedings for a federal court to declare whether a party has the right to share in an estate. Indeed, doing so has been held specifically within the equity jurisdiction of the federal courts." 13B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3610 (2d ed. 1984) ("Wright & Miller").

Interpreting and liberally construing the second and fifth aspect of plaintiffs' claim for relief as seeking a declaration that they are entitled to a portion of the Hughes estate, this Court would have the power to entertain the action so long as plaintiffs have established as well either a federal question or diversity as a basis of federal court jurisdiction. Id.

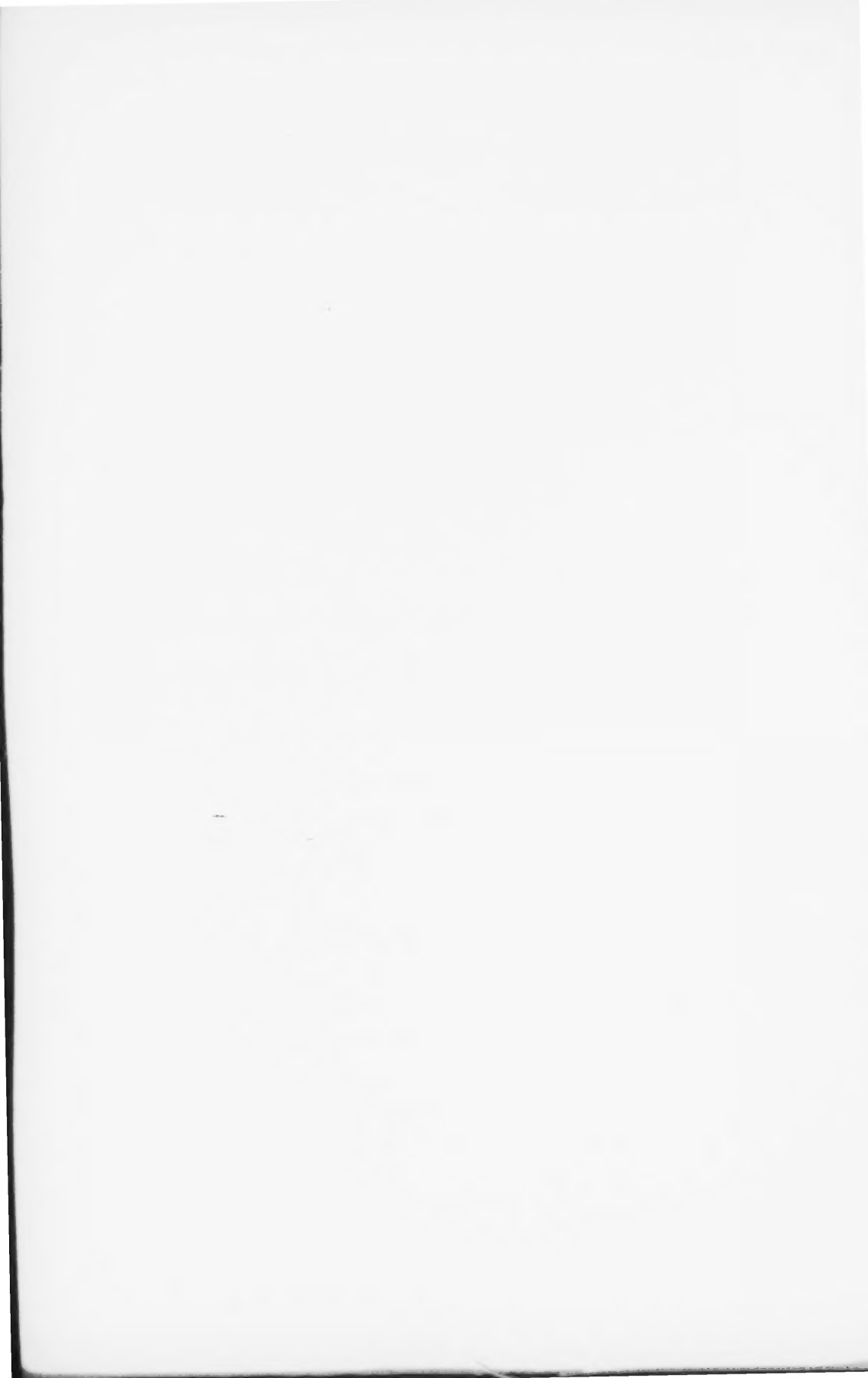
B. Federal Question Jurisdiction.

Although plaintiffs ritually intone that the



Texas proceedings deprived them of "due process" and 'equal protection of the law' under the fifth and fourteenth amendment," complaint ¶ 2, the circumstances of this case point out beyond cavil the clear lack of any cognizable federal question. Because the due process and equal protection clauses limit only the power of government, a showing of state action is required to violate those constitutional rights. Plaintiffs have made no argument and the Court is unaware of any precedent for the proposition that defendant Lummis clothed himself in the power of the state once he assumed his position as administrator of the estate of Howard R. Hughes. Consequently, in the absence of any state action by defendants, there could be no constitutional violation on which to premise federal jurisdiction.

Alternatively, even were the Court to equate Lummis' actions with those of the state, principles of abstention preclude this Court from hearing plaintiffs' complaint. In its recent decision in Pennzoil Co. v.



Texaco, Inc., 55 U.S.L.W. 4457 (1987), the Supreme Court elaborated the applicability of the principles of federalism enunciated in Younger v. Harris, 401 U.S. 37 (1971), to civil as well as criminal proceedings. The first premise of the Younger decision was "the basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law." Id. at 43; see Pennzoil Co. v. Texaco Inc., supra, 55 U.S.L.W. at 4459-60. Here, plaintiffs had adequate opportunity to appeal the decision of the Probate Court through the appellate procedure provided in the Texas courts. Although plaintiffs contend that a mere technicality of not filing a bond precluded their seeking review in Texas, they may not now forge a key to the federal courthouse out of their misfeasance in failing to post the required bond. Such a preposterous argument would allow any aggrieved party to circumvent the state appellate process simply by failing to comply with the state's procedural requirements.



The second premise of Younger abstention concerns comity, "a system in which there is sensitivity to the legitimate interest of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the State." Younger v. Harris, supra, 401 U.S. at 44. Comity mandates abstention whenever "the States' interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the State and the National Government." Pennzoil Co. v. Texaco, Inc. supra, 55 U.S.L.W. at 4460. In light of the significant state interest in efficiently administering the estates of its decedents in a single proceeding and in view of the opportunity to pursue federal challenges to those proceedings within the state courts, the principle of comity bids restraint here.



C. Diversity.

Plaintiffs have not adequately alleged diversity jurisdiction. The party seeking to invoke federal jurisdiction on the basis of diversity must affirmatively allege the existence both of diversity of citizenship and the requisite amount in controversy. Diversity between the parties must be complete, that is none of the opposing parties may be citizens of the same state. Strawbridge v. Curtis, 3 Cranch 267 (1806). Naked allegations that the parties are citizens of different states, absent an averment of the particular states of which the parties are citizens, are insufficient to meet the pleading requirement. The sole jurisdictional averment, contained in paragraph one of the complaint, that "[f]ifteen of the Plaintiffs herein, are citizens of the State of New York," plainly fails to establish diversity jurisdiction. Accordingly, the Court dismisses the complaint for lack of subject matter jurisdiction.³



II. Personal Jurisdiction.

Plaintiffs' counsel first instituted suit in the New York Supreme Court, Erie County on July 3, 1985. In a decision dated May 29, 1986, Justice Kasler dismissed that suit for lack of personal jurisdiction over the defendant William R. Lummis.

With respect to plaintiffs' claim the result [of jurisdiction] should be evident. Howard R. Hughes, Jr. died a non domiciliary of the State of New York without owning any real or personal property or ther assets in the State of New York. His estate was administered in a foreign forum by fiduciaries appointed or acting on behalf of the estate in that same forum and not in New York. Simply put, as urged by defendants, there is absolutely nothing to connect the courts of this State with the foreign administration of the estate of Howard R. Hughes, Jr.

Defendant's App. at 519 (emphasis in the original). Despite the unambiguous basis of Justice Kasler's decision, plaintiffs have persisted here in their efforts to obtain a portion of the Hughes estate. The Court will consider then whether plaintiffs now adequately allege any basis for personal jurisdiction.

The party invoking the jurisdiction of the federal courts bears the burden of establishing the court's jurisdiction over a nonresident defendant. Defendant Lummis contests the Court's personal jurisdiction. Plaintiffs therefore must provide competent proof that the Court may validly exercise personal jurisdiction over him. Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981). Assuming arguendo that this action could be premised on diversity, personal jurisdiction over Lummis could be determined by reference to relevant New York jurisdictional statutes. Rule 4(e), Fed. R. Civ. P.; see United States v. First National City Bank, 379 U.S. 378, 381-82 (1965).



Because defendant Lummis is not a resident of the State of New York, is not doing business within the state, see N.Y. Civ. Prac. L. & R. § 301, and was not served with the summons and complaint in New York but rather by mail, plaintiffs must be relying on New York's long arm statute as the basis for personal jurisdiction. See id. § 302.

For jurisdiction to exist over an out-of-state defendant under § 302(a)(1), the New York Court of Appeals has held that, at a minimum, "there must have been some 'purposeful activities' within the State that would justify bringing the nondomiciliary defendant before the New York courts." McGowan v. Smith, 52 N.Y.2d 268, 272, 419 N.E.2d 321, 322, 437 N.Y.S.2d 643, 644 (1981). Stated differently, the nonresident defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" McKee Electric Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 382, 290 N.E.2d 604, 607, 283 N.Y.S.2d

_34 (1967) (quoting Hanson v. Denkla, 357 U.S. 235, 253 (1958)); accord McGowan v. Smith, supra, 52 N.Y.2d at 272, 419 N.E.2d at 322, 437 N.Y.S.2d at 644. In addition, the Court of Appeals has stressed that for jurisdiction to be premised upon § 302(a)(1), there must also be "some articulable nexus between the business transacted and the cause of action sued upon." McGowan v. Smith, supra, 52 N.Y.2d at 273, 419 N.E.2d at 323, 437 N.Y.S.2d at 645.

Defendant Lummis has sworn that he does not own, use, or possess real or personal property located in the State of New York, that he neither now nor ever has contracted to supply goods or services in the State of New York, that he has neither regularly done business in the State of New York nor transacted business in the State of New York related to the alleged cause of action, that he has not engaged in any persistent course of conduct in the State of New York, and, finally, that none of the acts alleged in the complaint occurred in the State of New York. Affidavit of William R.

Lummis at ¶¶ 4-18 (sworn to August 2, 1985)(contained in Defendants' App. at 18-19). In light of these disavowals, plaintiffs support their argument for personal jurisdiction on the conclusory assertions that "there [have] been, during the course of the administration of the Estate and prior thereto, numerous 'contracts' in the State of New York in the form of assets and in the form of 'doing business' in the State of New York and said business is still being done herein. . . . [T]wo, are we naive enough to believe that any business can be transacted in this county, or in the world, without going through New York City, the business capital of the world?" Memorandum of Law In Support of Cross Motion of Defendant [sic, Plaintiffs,] at 4. Plaintiffs have simply made no allegations connecting the injuries they supposedly suffered in Texas with supposed activities in New York concerning assets possibly included in the Hughes estate. This Court, therefore, lacks jurisdiction under § 302(a)(1).

Although plaintiffs have not made the



specific arguments, the Court would note that none of the other possible bases of long arm jurisdiction appear here. To obtain jurisdiction under the remaining subsections of § 302(a), the acts alleged in the complaint must either have occurred in New York or have had significant New York consequences. Alleged injuries to New York residents that occur outside New York do not create an impact in the state within the meaning of § 302(a)(2). McGowan v. Smith, supra. As noted, defendant Lummis has sworn that he does not engage in any persistent course of conduct in New York or own any real property located in New York. Subsections (a)(3) and (a)(4) are therefore inapplicable as well.⁴ In sum, plaintiffs have failed to allege any adequate basis for personal jurisdiction in the Southern District of New York.

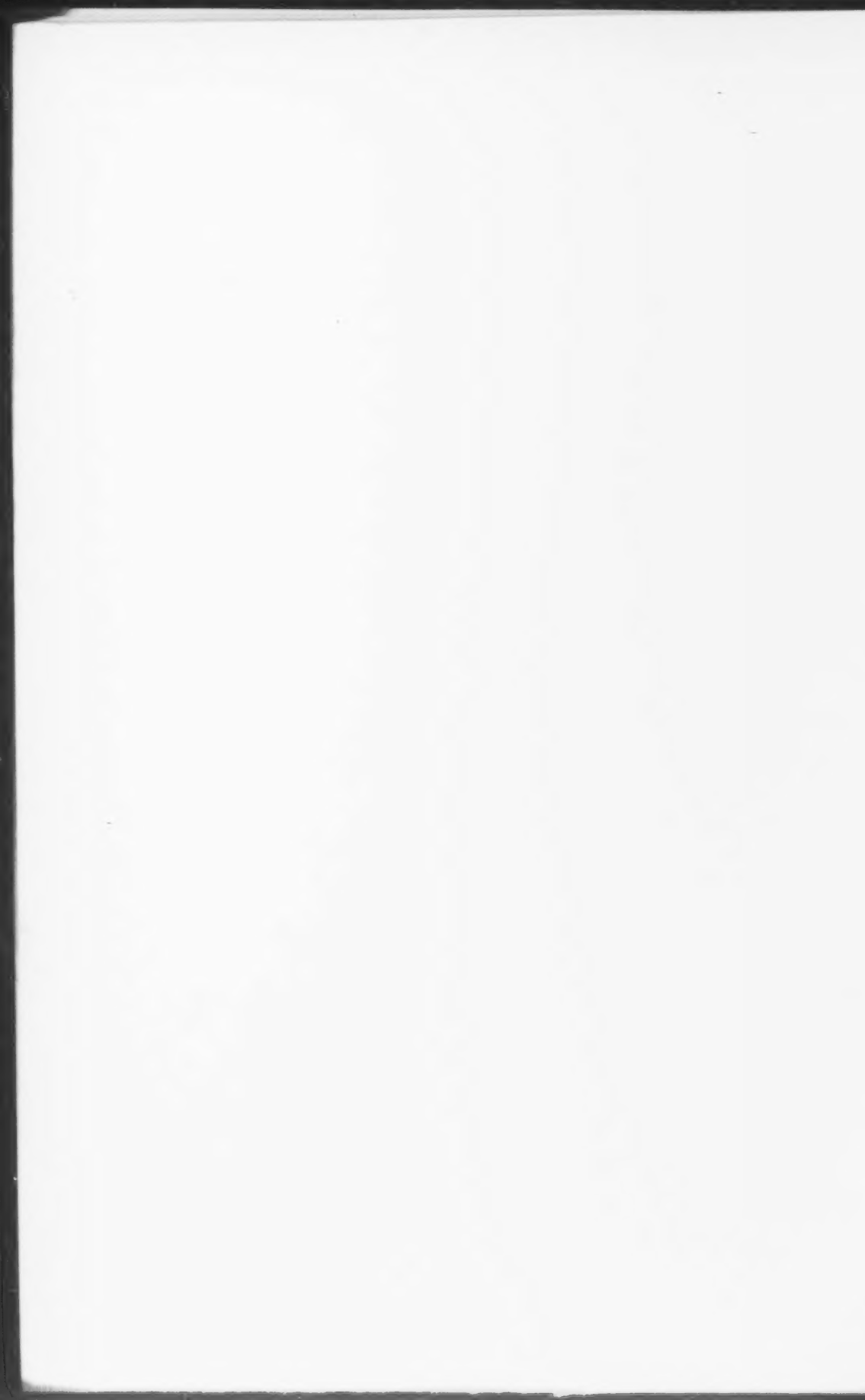
III. Rule 11 Sanctions.

The Court's decision to dismiss this suit on the merits obviates the need to consider any of the other grounds asserted by the defendant for dismissing



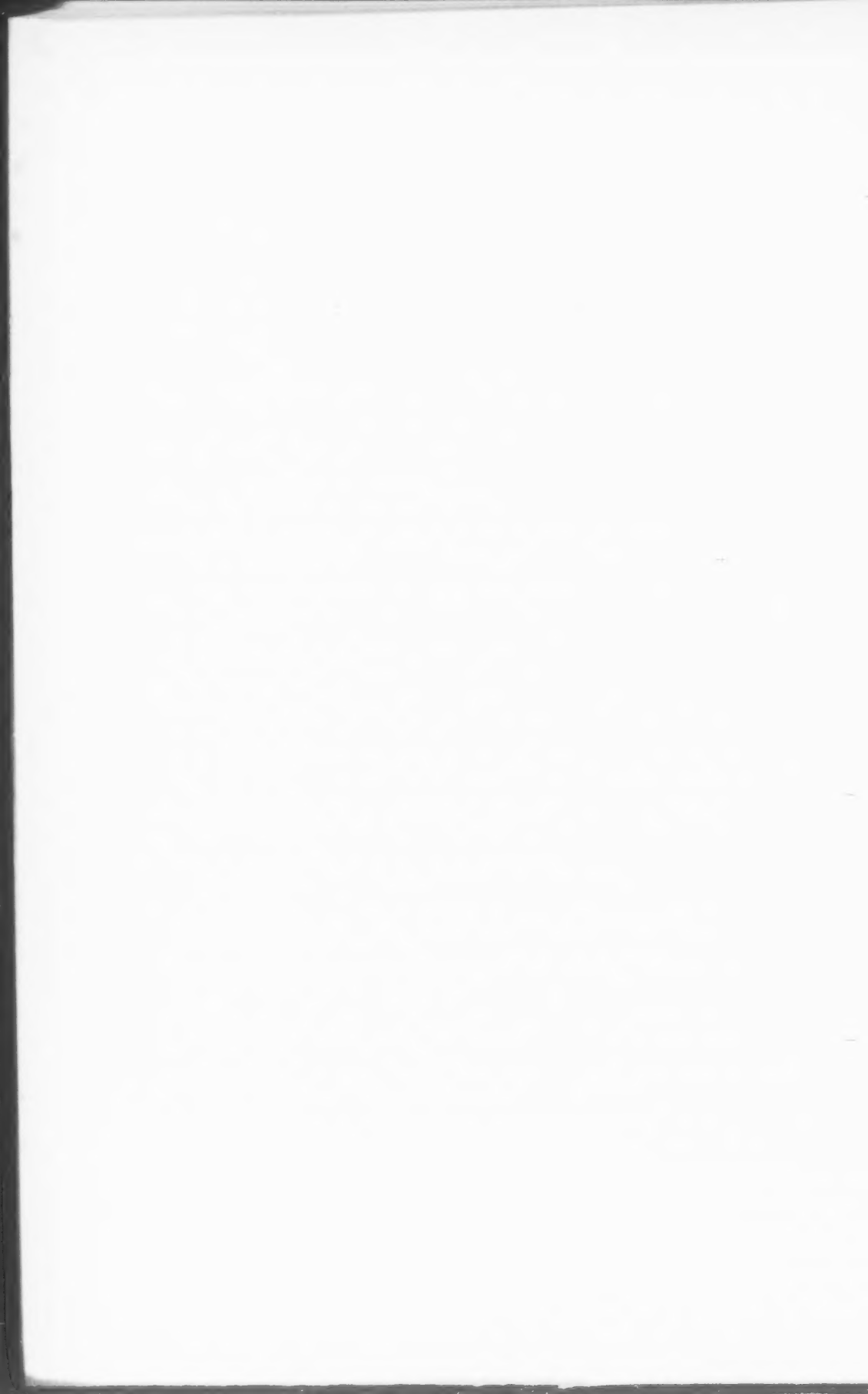
the action beyond noting that most if not all of the other bases for dismissal appear meritorious as well. The conduct of this vexatious litigation by plaintiffs' counsel, both here and in the state courts of Texas and New York, displays astonishing ignorance of applicable substantive law, cavalier indifference to jurisdictional questions, and insolent disregard for binding judicial decisions. The action amount to an arrogant and completely unwarranted imposition on the federal judiciary. Accordingly, it will be necessary to consider the imposition of sanctions under Rule 11, Fed. R. Civ. P., for plaintiffs' counsel's abuse of judicial process.

³The Court usually would dismiss without prejudice a complaint that inadequately pleaded subject matter jurisdiction. In this instance, doing so would be futile inasmuch as the Court plainly lacks personal jurisdiction over defendant William Lummis. The facial invalidity of plaintiffs' jurisdictional allegations



also obviates the need for the Court to determine whether plaintiff William A. Jones, the alleged "authorized agent and representative" is a bona fide representative with the legal right to sue and represent the three hundred paternal heirs of Howard R. Hughes so that the Court would look to his citizenship rather than to that of the three-hundred supposed heirs in determining diversity. See 13B Wright & Miller § 3606.

⁴In any event, it is extremely questionable whether plaintiffs could make out an injury within the state. Acts occurring outside the State of New York that allegedly interfere with supposed property interests in an estate being probated in another jurisdiction do not create an injury within the state. See Pocello v. Brackett, 85 A.D. 2d 917, 446 N.Y.S.2d 780 (4th Dep't 1981), aff'd, 57 N.Y.2d 962, 457 N.Y.S.2d 243, 443 N.E.2d 491 (1982) (tort that occurred outside New York did not cause injury within New York merely because the estate can recover damages in a wrongful death action).



CONCLUSION

Defendants' motion to dismiss the complaint for lack of subject matter jurisdiction and for lack of personal jurisdiction is granted. Plaintiffs' cross-motion for sanctions under Rule 11, Fed. R. Civ. P., is denied. Plaintiffs' counsel Richard D. Grisanti is directed to appear before the Court on June 12, 1987 at 10:00 a.m. for a hearing on defendant's application for fees and sanctions under Rule 11, Fed. R. Civ. P. That portion of defendant's motion requesting fees and sanctions is adjourned to that date.

It is so ordered.

Dated: New York, New York
June 4, 1987

s/Robert J. Ward

ROBERT J. WARD, U.S.D.J.

APPENDIX C

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Docket No. 87-7546

VICTOR L. GANOE, ET AL

Plaintiffs-Appellants

vs.

WILLIAM LUMMIS, Temporary Administrator
of the Estate of HOWARD R. HUGHES, JR.

Defendant-Appellee

MOTION

Comes now the captioned Plaintiffs-Appellants and
moves the Court for leave to file the attached affidavits
of Mr. William A. Jones and Mr. C. Alex Meacham as
response to the Defendant-Defendant-Appellees to this
Honorable Court.

ATTORNEY FOR PLAINTIFFS-

APPELLANTS



S/

RICHARD D. GRISANTI, ESQ.
577 Niagara Street
Buffalo, New York 14201
Phone (716) 883-0400

CERTIFICATE OF SERVICE

I certify that I have mailed a copy of this motion to ALEXANDER C. CORDES, of Counsel with PHILLIPS, LYTTLE, HITCHCOCK, BLAINE & HUBER, 3400 Marine Midland Center, Buffalo, New York 14203, (716) 847-7036, attorneys for record of the Defendant-Appellees, postage prepaid, on the the _____ day of January, 1988.

RICHARD D. GRISANTI

BEST AVAILABLE COPY



Exhibit 1

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

VICTOR L. GANOE, ET AL

Plaintiffs-Appellants

vs.

Docket No. 87-7546

WILLIAM LUMMIS, Temporary Administrator
of the Estate of HOWARD R. HUGHES, JR.

A F F I D A V I T

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, WILLIAM A. JONES, after first being duly sworn
made oath as follows:

I was retained as a Genealogical Consultant by
various heirs of Howard R. Hughes, Jr. just before his
death and I have worked on the case since that time. I
am familiar with the pleadings in the various cases
involving his Estate.

I was present at the United States Court of Appeals for the Second Circuit hearing in this cause and heard Mr. Alexander Cordes argue the case for the defendant, William Rice Lummis. To the best of my present recollection, Mr. Cordes told the Court that he knew that the issues pertaining whether Avis and Rush Bissell were blood heirs of Mr. Hughes were fully litigated by a jury trial. This is an absolute misrepresentation! Mr. Lummis testified under oath in the District Court in Las Vegas, Nevada that the Barbara Cameron Group (Cameron, Depould and Roberts) were no kin to Mr. Hughes. The Probate Court in Houston, Texas, set a hearing in 1981 without giving proper notice to the plaintiffs on the issue pertaining to Avis and Rush Bissell. Judge Pat Gregory, the Probate Judge of Harris County, Texas, did not allow the plaintiffs' attorney to participate in the hearing. This was after the Heirship Jury Trial and amounted to a Judicial farce. Prior to this one-sided hearing Avis and Rush Bissell were held by Judge Gregory and Judge Keith Hayes not to

be any kind of heirs whatsoever. Mr. Theodore Dinkins, Attorney-ad- Litem, was present at the one sided alleged hearing (just hearing one side of the case is not a lawful hearing) and asked the Court if it was necessary for him to participate and the Court told him in effect that it was not necessary. The attorney for Avis and Rush Bissell advised the Court of the Secret Settlement Agreements and the Court held Avis and Rush Bissell were heirs by Adoption by Estoppel based upon the Settlement Agreements. There was no jury trial or trial on these issues! Previous to his hearing, Judge Gregory and various attorneys involved in the Secret Settlement Agreement conspiracy and collusion had previous angrily denied on numerous occasions that there were any Secret Settlement Agreements when I asked them whether there were any such agreements. They said that there were no such agreements, that would be illegal and that we would have our day in Court but instead the whole thing was a farce.



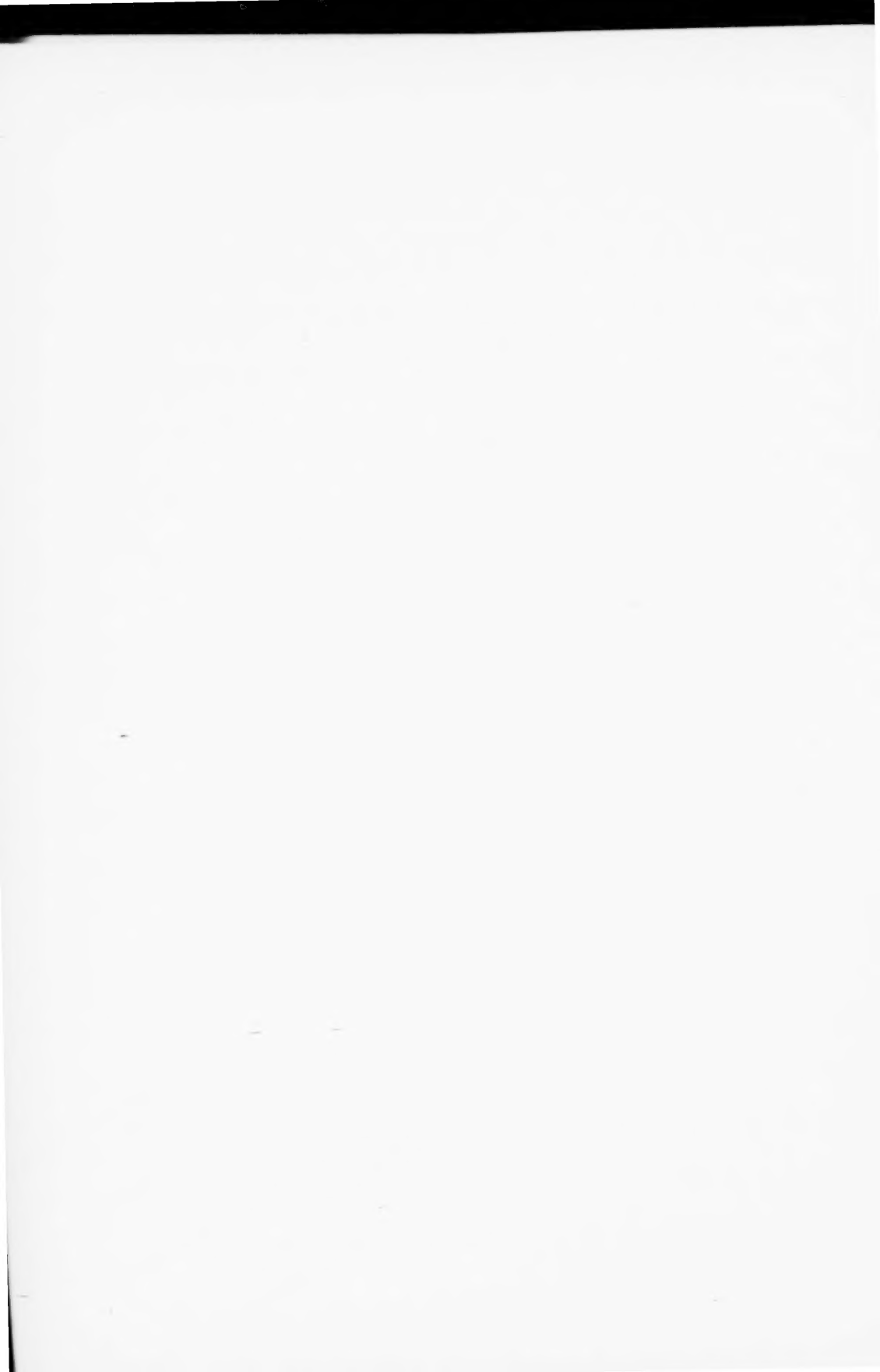
Avis and Rush Bissell were the children of George and Adelaide Bissell who were never divorced. On January 6, 1915, in the Wayne County, Detroit, Michigan Court, was dismissed (Order of Discontinuance) on January 6, 1915 which facts were sent to Mr. Dinkins on December 15, 1976 and January 5, 1977. Mr. Dinkins withheld this information from the plaintiffs and the jury in the Heirship trial. A copy of the notices to Mr. Dinkins concerning the divorce of, Adelaide Bissell v. George Bissell, Liber 35, page 306, No. 28014, Circuit Court of Wayne County, Michigan dated December 15, 1976 and January 5, 1977, which were mailed to Mr. Dinkins are attached hereto as exhibits 1 and 2.

Under the Texas law, it was necessary for Avis and Rush Bissell to prove that their mother, Adelaide Bissell, was the lawful wife of Rupert R. Hughes before they could qualify as heirs of Howard R. Hughes, Jr. by Adoption by Estoppel by Rupert Hughes. It was also necessary to prove that the Barbara Cameron Group were



legal heirs before Avis and Rush could be heirs. This is why it was necessary for one or more of the co-conspirators to withhold the aforesaid Order of Discontinuance from the plaintiffs and the jury in the Heirship trial. This constitutes obstruction of justice.

In 1981 I discovered the case file of Agnes Hedge Wheeler Hughes v. Rupert R. Hughes, No. 29203-04 (1904) which was filed in the Supreme Court of Manhattan, State of New York. Contained in the Court file there was a Special Master's Report (Susan Finstad attorney's book "Heir No Apparent" called it Referee's Report) which showed that Agnes was a prostitute and crazy, that Agnes would abandon Elspeth at various times due to her improper conduct; that Rupert did take care of Elspeth while Agnes had abandoned her on numerous occasions; that both children were illegitimate; that Rupert R. Hughes was overseas when the alleged Elspeth Hughes Lapp was conceived; Agnes's two (2) children were illegitimate, which she gave her children away to her sweetheart's



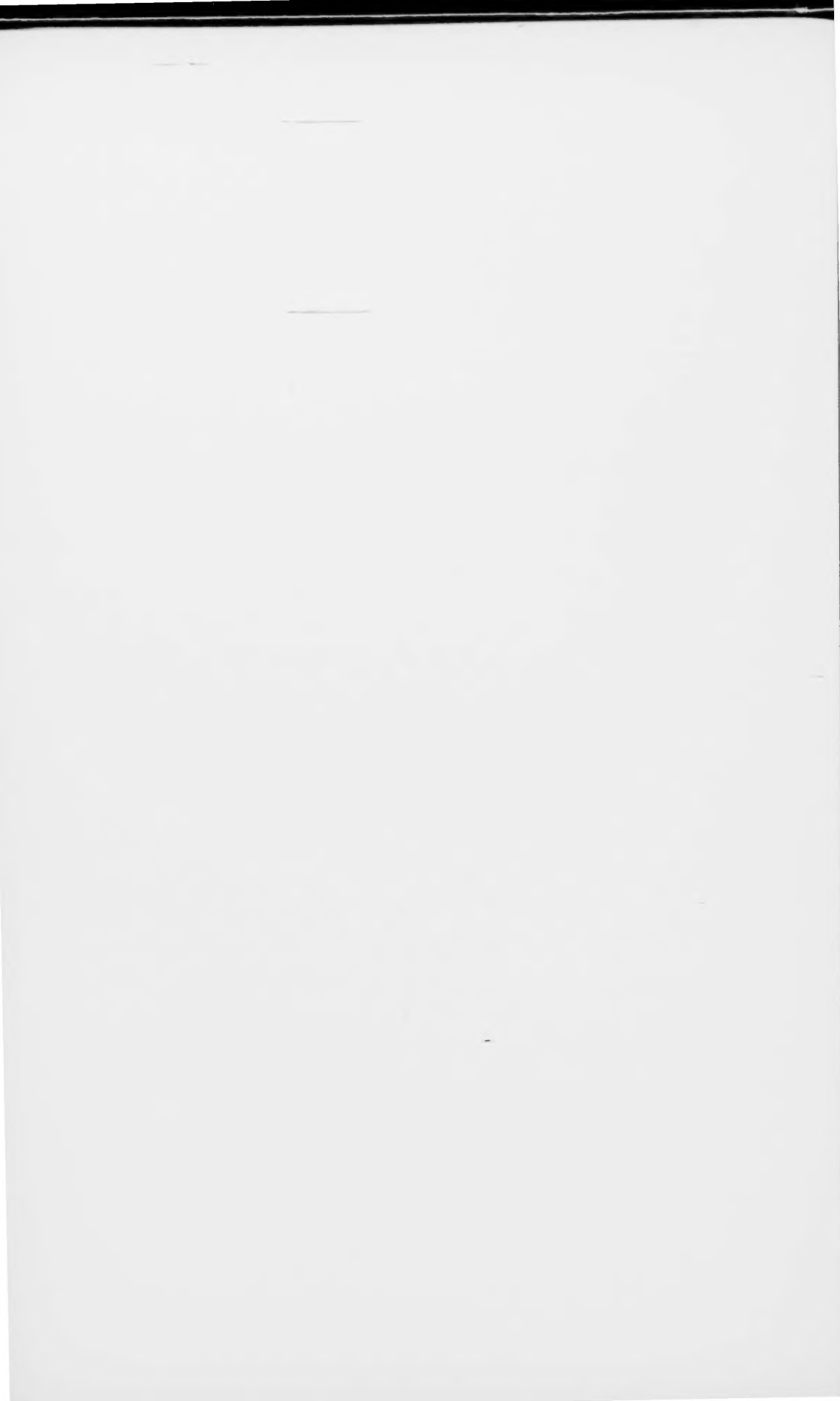
family; that Rupert Hughes did not have any children; and this Special Master's report would have proved beyond a doubt that the Barbara Cameron Group were not intestate distributees of Howard R. Hughes, Jr. because they were not the nearest lineal ancestors and Mr. Hughes's descendants in accordance to Texas Probate Code, Section 38(a)(4) A.57. The Special Master's Report was stolen from the files of the Supreme Court of Manhattan, New York, which is within the venue of the Southern District Court of New York (across the street).

The Long Arm Statute of New York CPLR 302 provides in part that when a tortious act occurs within the State of New York then jurisdiction in that State would be proper. The stealing of the aforesaid file is a tortious act and obstruction of justice in violation of the Federal Statutes.

While I was in New York for the United States Court of Appeals, for the Second Circuit, in December 1987 hearing, I learned from the Deputy Clerk of the

Supreme Court of Manhattan of New York that David C. Oxman of Davis, Polk, Wardwell Law Firm, 1 Chase Manhattan, New York, NY 10005, phone (212)422-0238, had checked the Court file containing the case of Agnes Hedge Wheeler Hughes vs. Rupert R. Hughes, No. 29203-04 out. We previously had discovered that the same attorney had handled the case of In Re Dinkins, Index No. 14694180, dated August 4, 1981, in the Supreme Court of Manhattan New York, wherein the said Court certified and exemplified copies of the said file in the case of Agnes Hedge Wheeler Hughes v. Rupert R. Hughes, No. 29203-04, upon the request of Theodore Dinkins, Attorney-ad- Litem, in the Probate Court Case in Houston Texas.

In the book entitled "Heir Not Apparent" on page 381 the aforementioned stolen Special Master's Report is mentioned by the attorney author, Susan Finstad, thereby proving its existence and the fact that attorney-ad-Litem Dinkins knew about the said court report. Ms. Finstad was retained by Mr. Dinkins to do research in



the Howard R. Hughes, Jr., Estate and worked in his office for 6 years while the Hughes Estate was proceeding. Mr. Dinkins also withheld this Special Master's Report from the plaintiffs and the jury in the Heirship Trial.

Under the Texas law, it was necessary for the Barbara Cameron Group (Barbara Cameron, Elspeth Depould and Agnes Roberts) to prove that they were the heirs of Elspeth "Hughes" Lapp; and that Elspeth "Hughes" Lapp was the lawful daughter of Rupert R. Hughes. This is the reason one or more of the co-conspirators had to steal the aforesaid Special Master's Report because same would have proven that Elspeth "Hughes" Lapp was not the daughter of Rupert R. Hughes and therefore the Barbara Cameron Group were not the heirs of Howard R. Hughes, Jr. under the Texas or any other State laws nor would Avis and Rush Bissell be heirs by adoption by estoppel or any other kind of heirs to Howard Robard Hughes, Jr.

I and/or my attorneys also discovered that the

following blood type records of Rupert R. Hughes were stolen:

Veterans Administration, Regional Office,
1000 Liberty Street, Pittsburgh, PA.

Military Headquarters Section, Navy and Army
Reserves, National Guard, Dept. of Military and
Naval Affairs, Public Security Building, No. 22,
Albany, N.Y.

General Service Administration, National
Archives and Records Service, 1 National Personnel
Records, 9700 Page Road, St. Louis, MO 63162.

California National Guard, 2829 Watt Avenue,
Sacramento, CA 95821.

Hollywood Presbyterian Medical Center, 1300
North Vermont Avenue, Los Angeles, CA.

I and/or my attorneys also discovered that the
blood type and other vital records of Agnes Hedge Wheeler
Hughes Reynolds were stolen from the following medical
institutions:

Eastern State Hospital, Drawer A. Williamsburg,

VA 23185 (Admission about 1941)

Lakeside Hospital, University of Hospitals
at Cleveland, 2074 Abington Road, Cleveland, Ohio
4105

The above records from Williamsbury, VA at Eastern State Hospital showed the blood type as well as other official records showing that Agnes and family showed Elspeth, the mother of the 3 girls (Cameron Group) was the "alleged" daughter to Agnes, not her real daughter, only an "alleged" daughter, and was not her real daughter according to Agnes. Being the mother, Agnes should know whether this Elspeth was her true daughter. In my first phone call to the Eastern State Hospital officials and by the hospital's return call but none of this information made it to the Heirship jury trial in Houston.

I an/or my attorneys also discovered that the following blood type records of Elspeth "Hughes" Lapp were stolen from the following medical institution:

Lakeside Hospital, University of Hospitals
at Cleveland, 2074 Abington Road, Cleveland, Ohio



44106

I understand the aforesaid medical records would have clearly and beyond any doubt proved that Elspeth "Hughes" Lapp was NOT the legitimate daughter of Rupert R. Hughes.

The aforesaid blood type records would have proven that Elspeth "HUGHES" Lapp was NOT the daughter of Rupert R. Hughes.

One or more of the co-conspirators stole or had the aforesaid records stolen and same constitutes acts of conspiracy, obstruction of justice and larceny, all of which are tortious acts.

Mr. Alexander Cordes also told this Honorable Court that the defendant, William Lummis as the Temporary Administrator of the Estate of Howard R. Hughes, Jr. did not do business in the Southern District of the State of New York. This is a blatant misrepresentation! The affidavits contained in this case clearly show the Hughes Estate did business in the Southern District of



New York and so did Howard R. Hughes, Jr., prior to his death.

On page 157 of "Heir Not Apparent" Ms. Susan Finstad said that the claims of heirship of Rush and Avis were never litigated...Judge Gregory explained his by stating that the adoption issue was dependent on the outcome of the trial to determine Elspeth's legitimacy ...He was following a line of cases that hold that, for an individual to be adopted "by estoppel", the adoptive parent must also have a natural born child to estop...

On page 158 the author said this was a legal coup of unpassed audacity. This was the reason the blood types and the aforesaid records had to be withheld as part of the conspiracy and all these records disappeared or were withheld.

On page 4 of the Brief of the Defendant-Appellee the following statement is made: "The Texas proceedings were conducted with scrupulous regard for the rights of any person claiming an interest in the Hughes Estate".

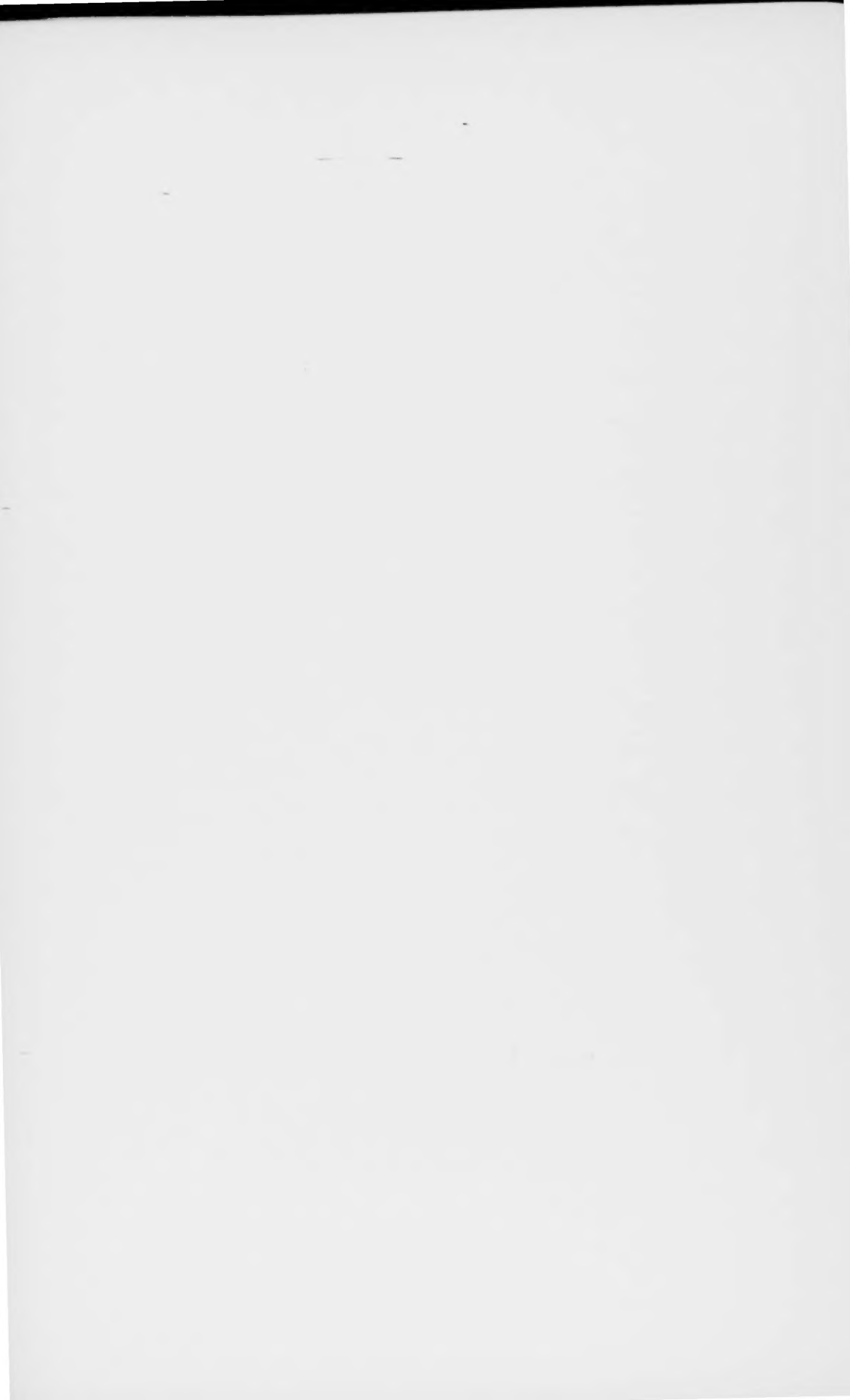
This statement is a gross misrepresentation!! Attorney-ad-Litem Dinkins withheld the information pertaining to the case of Adelaide Bissell v. George Bissell, Jr. Liber 35, Page 306, No. 28014, filed in the Circuit and/or County Court of Wayne County, Detroit, Michigan, and Agnes Hedge Wheeler Hughes vs. Rupert R. Hughes, No. 29203-04 (1904) from the Plaintiffs and the jury in the Heirship trial in the Probate Court of Harris County, Houston, Texas. This is unscrupulous miscarriage of justice, obstruction of justice, and acts of conspiracy some of which occurred in the Southern District of the State of New York. There was no jury trial on the issue of whether the Avis and Rush Bissell were heirs of Mr. Hughes. No proper notice was given to the plaintiffs of the hearing involving these people. This is unscrupulous!!

Judge Pat Gregory would not permit proof of the blood types of the alleged heirs and this is not scrupulous when he had ordered scientific evidence. The failure of Judge Pat Gregory to allow the plaintiffs



to participate in the hearing pertaining to the Avis and Rush Bissell claims are not scrupulous. The failure of the Attorney-ad-Litem, Dinkins to cross examine the witnesses in the aforesaid alleged hearing without a jury and the right to object to the Secret Settlement Agreements is not scrupulous.

Judge Pat Gregory ordered the plaintiffs to produce scientific proof of their claims and when they got prepared to prove the blood types of the heirs, he changed his ruling and disallowed such proof. While the plaintiffs were obtaining the blood type proof, the aforesaid blood type records and certain other materials were stolen in an apparent effort to obstruct justice. I was told by one of the custodians of the blood type records at the California National Guard located in Sacramento, California that two (2) lawyers named Richard P. Rich and Michael J. Ezer, Attorneys, Suite 1204, 1888 Century Park East, Century City, Los Angeles, California 90067, phone (213) 277-7747, examined the said records and after their examination of same, the



blood types of Rupert Hughes were missing. These lawyers were retained by Avis and Rush Bissell and/or their attorneys.

After I asked Judge Pat Gregory and one or more of the attorneys who signed the Secret Settlement Agreements about whether there were any such secret agreements, persons presently unknown shot into the houses rented by me in Houston and Brentwood and my mother in Nashville, Tennessee and into my car. The U-Haul rental truck that I had about 40 boxes of the Hughes Estate files were stolen and the truck was almost totally destroyed. The Hughes Estate files were stolen. I was told by one of the court officers of the Probate Court of Harris County, Texas, if I said anything to the press I could be sanctioned, under violation of Judge Gregory's "Gag Order" and that I could be fined \$100,000. and locked up in the jail. This is not scrupulous. At this same time under the same "Gag Order" the other side had over 100 news releases to the media which ^{we} were afraid to answer even when called by the media to respond.

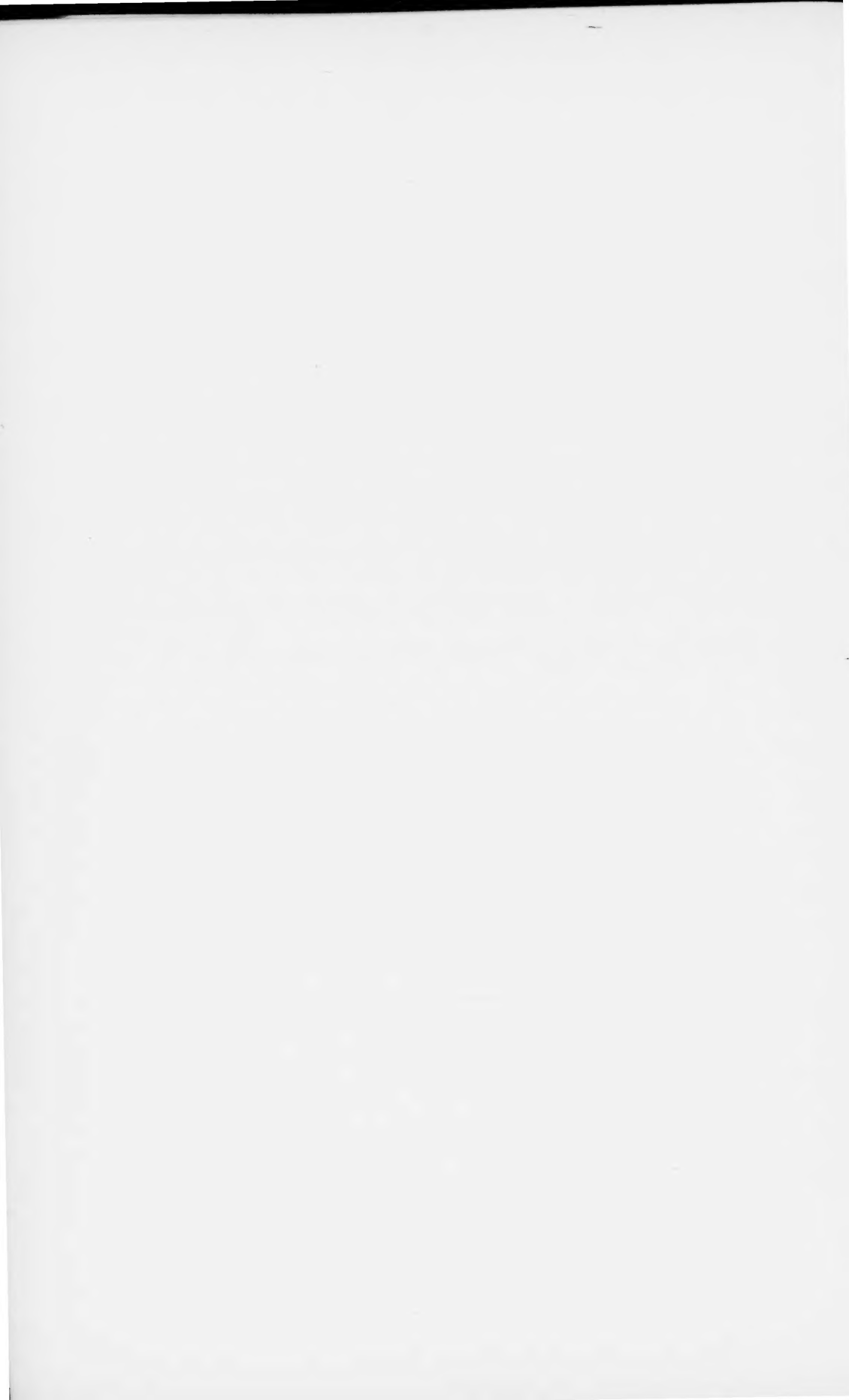
On page 5 of the Brief of the Defendant-Appellee the defendant made the following statement: "The jury specifically rejected a claim by the Jones Group that Rupert Hughes (a deceased paternal uncle of Mr. Hughes) had been sterile and/or impotent and could not have fathered his so-called daughter, Elspeth "Hughes" Lapp (the deceased mother of the three individuals finally determined to be paternal heirs)." The stealing and/or withholding of the aforesaid Special Master's Report and the various blood type records along with the aforesaid discontinuance order kept the Jones Group of Hughes 2nd Cousins from proving their claim. This illustrates that the Jones Group were damaged by the stealing and/or withholding the Manhattan Court Special Master's Report and that venue in the Southern District Court of NY is proper to sue for the said acts.

Prior to the time this case was dismissed in the Southern District Court, the plaintiffs filed a motion in the said Court to strike various party plaintiffs and defendants to add others and add additional allegations



concerning jurisdiction and the lower court erroneously failed to rule on same before the case was dismissed. I understand the Federal Rules of Civil Procedure provides that motions to amend should be acted upon by the Court. The plaintiffs discovered various facts between the time the subject lawsuit was filed and the motion to amend was filed that made the motion a proper pleading. They intended in the motion to amend to add intestate distributees of the Hughes Estate along with one or more Judges and attorneys to show there was "state action" within the meaning of 28 USC 1331 and to comply with Rule 19 (Fed. R. Civ. P. 12 (b) (7)). They also intended to strike various plaintiffs so that there would be complete diversity and add a class action count to cover any party plaintiff who was damaged by the tortious acts that occurred in the Southern District of New York and elsewhere.

On page 17 of the Brief of the Defendant-appellee it is stated that the Administration did not act in New York. This is a misrepresentation as is shown by



the affidavits contained in this record.

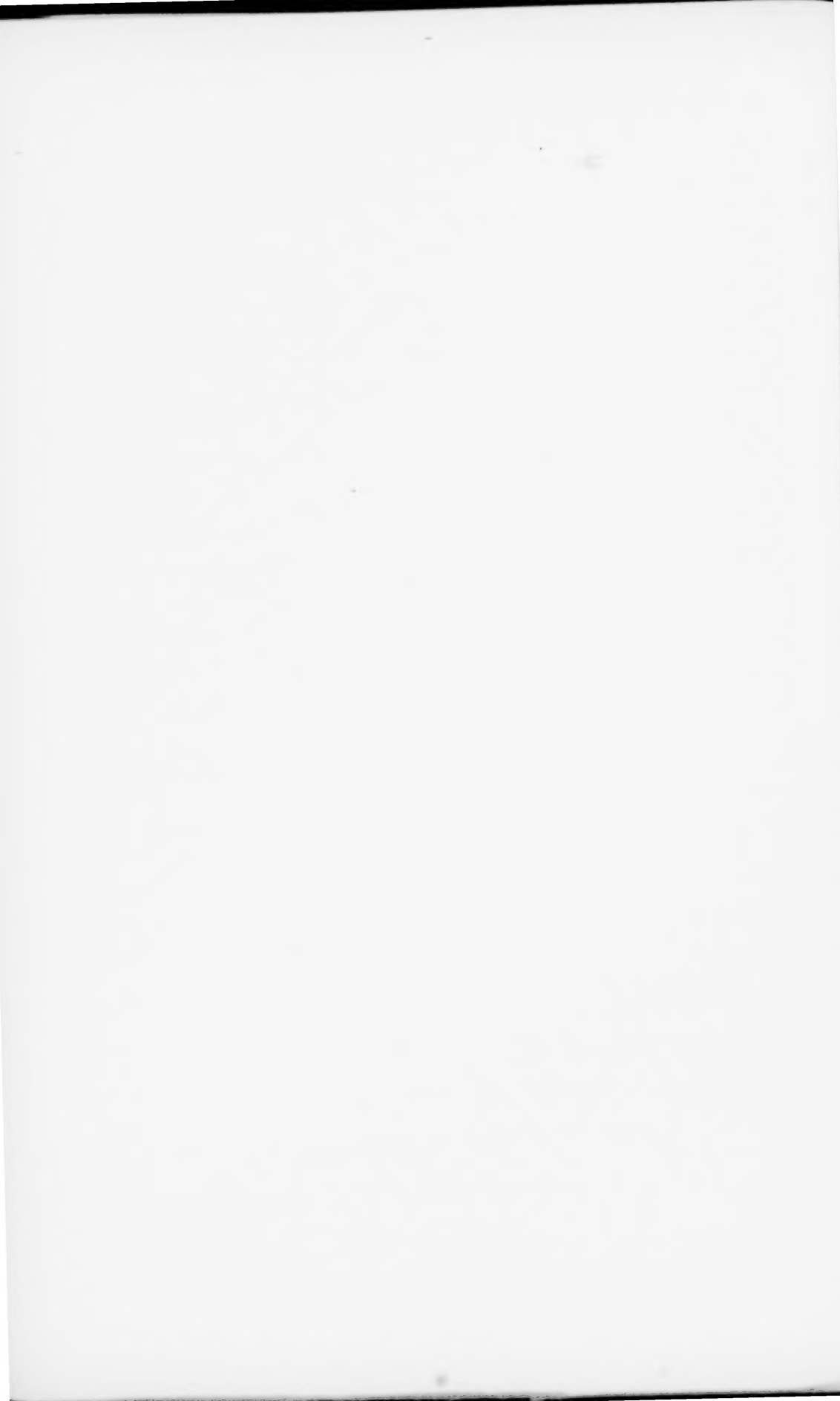
The aforesaid Motion To Amend would have also taken care of the argument pertaining to a federal question by adding additional allegations pertaining to the stealing and/or withholding the Manhattan Court records from the plaintiffs and the Heirship jury, obstruction of justice and interstate conspiracy. If one act was a part of the interstate conspiracy took place in the Southern District of New York then all such acts could have been proven in the said court.

I have been advised that Judge Pat Gregory's son while serving 10 years in the Texas State penitentiary, has since been released, has stated that Judge Gregory took a \$10,000,000. bribe in the Howard R. Hughes, Jr. Estate and numerous bribes and rake offs in some other probate cases, too. I am also advised that Judge Gregory aided and abetted the signatories to the Secret Settlement Agreements by helping change some of the language while the said secret agreements were being drafted and meeting with one or more of the people who

were preparing same. This constitutes "state action". One of the meetings that took place regarding the preparation of the Secret Settlement Agreements took place in the State of Florida, at Destin therefore, the co-conspirators crossed the state line. This interstate conspiracy and/or collusion should constitute a federal case. When Judge Pat Gregory and other responsible parties denied there were no Secret Settlement Agreements, this constituted state action, as well.

When one or more of the defendant's attorneys made misrepresentations to the lower court and to this Honorable Court that appears to constitute a tortious act within the jurisdiction of the Southern District of New York.

On page 23 of the Brief of the Defendant-Appellees it is stated that the Administrator did not conduct business in the State of New York and that none of the Estate assets have been held or administered in New York. This is another gross misrepresentation as is noted in the affidavits contained in this record. The Estate



did conduct numerous acts of business in New York in accordance with CPLR 302 and the Estate owned property there. The Estate solicited the sale of the Estate assets in the State of New York and these were acts that had significant consequences in accordance with CPLR 302. The plaintiffs have and will continue in the future to suffer extreme mental anguish for the acts that occurred in New York and substantial economic loss.

Some of the Plaintiffs are the nearest lineal ancestors and their descendants of Howard R. Hughes, Jr. and same would have been alleged in the new Complaints which would have been filed had the lower court acted on the Plaintiffs motion to amend. The Plaintiffs attempted to proceed in a representative capacity in an effort to keep the Hughes Family ancestors and their descendants from being harassed which has been done in this case in the past.

Before the Heirship Trial in Texas, Judge Pat Gregory was having a hearing to determine whether the

domicile was to be in Texas or Nevada when the clerk's office received a telephone call reportedly from Washington, D.C. Afterward Judge Gregory ruled that the domicile should be handled in Texas and not Nevada.

We all felt the place for appeals and new cases was not to be in Texas since this Judicial System had gone wild there in Texas. The rotten Texas system is in shambles. I understand from CBS 60 Minutes Report that the Chief Justice of Texas, the Honorable John Hill has resigned his highest position for the office trying to straighten out the corruption in the judicial Court System of Texas as evidenced by the attached article from Time Magazine dated January 11, 1988, page 74.

When the Texas Case involving the Hughes Estate Domicile issue was appealed to the Supreme Court of the United States, the said Court, because of its overloaded docket, appointed Federal District Judge Wade McRee at Ann Arbor, Michigan as a Special Master in the Hughes Estate Case. Judge McRee entered a Court Order ordering



in effect all proceedings in the Hughes Estate in all other jurisdictions to be stayed pending further orders of his court. After this order was entered, Judge John Mendoza, District Judge in Clark County, Las Vegas, Nevada, ignored the said order and paid out \$8,000,000 (Eight Million Dollars) in attorney fees and a partial Estate distribution to the alleged Hughes Heirs. Prior to making his ruling, Judge Mendoza received a telephone call which we heard was from the White House. After he took the said call in his chambers, he came back onto the bench. He asked if Mr. Alex Meacham, one of the Plaintiff's attorneys, was present and, if so, to stand up. When Mr. Meacham stood up and announced that he was present, Judge Mendoza ordered him to set down and shut-up and ordered the Court Officers to arrest him if he moved or said anything. Mr. Meacham had not previously said anything to the Court or even stood up in the Court's presence. When one of the attorneys for another party attempted to read Judge McRee's Order to Judge Mendoza for the record for his own client, Judge

Mendoza ordered the attorney's references to the Federal Court stricken from the record and then ordered his (Judge Mendoza) own reference to the said order stricken from the record, also. This is not scrupulous regard for the rights of the plaintiffs.

After the Heirship Trial it has been reported that Judge Pat Gregory took a number of his friends to Las Vegas from Houston where he is alleged to have paid for everything for the entire party and reportedly spent or lost over \$1,000,000 gambling. Judge Mendoza, Judge Gregory and a number of people connected with the Hughes Estate are reported to have had a large party near Las Vegas.

Prior to the Heirship Trial, Judge Gregory held that all of the proceeds of the Hughes Estate would be handled through his court but a lot of the proceeds have been distributed through the courts in California, Texas, Louisiana, Nevada but mostly through the Delaware Courts thereby making it virtually impossible for the Plaintiffs to stop the disbursements from the Estate



until the case could be completed. They were always moving the Estate funds around from place to place.

From the time the Hughes Estate was started in 1976 and now the Plaintiffs' attorneys have not received many of the defendants or other party's pleadings on time and/or in advance with their certification; thereby making it necessary to move very quickly to file a response and/or appear in court all over the U.S.A. According to postage meter date, letters of notice would often take 10 days to 2 weeks to get to us. The Postmaster said they don't process or stamp these letters and we would have no time to prepare or respond on time. It was a continual mess. This is not scrupulous. Part of the time we wouldn't even receive legal court and deposition notices on the Hughes Case.

During the time the Hughes case has been pending, Ms. Carol Dinkins, during the time she was the number two person in the United States Attorney General's Office in Washington, D.C., word was spread to the Plaintiffs that Ms. Dinkins could make one call to the FBI or the



U.S. Marshall's Office and we would be in trouble. What kind of trouble and for what we could never find out. Ms. Dinkins was the wife of Theodore Dinkins, Attorney-ad-Litem, in the Hughes Estate Case. Carol Dinkins was an attorney with Vinson and Elkins who represents some of the Ganoes, heirs in this Estate Case on the maternal side of the Hughes Estate Case. Also, during the time the case was pending, the plaintiffs' representatives were told that the defendants' attorneys was appointed to the United States Court of Appeals in Texas and that she would take care or any appeal in any case we could win in the Federal District Court in Texas. Judge Edith Jones was appointed to the said Federal Appeals Court and she still maintains an office in the law offices of Andrews, Kurth the defendants' attorneys in Houston, Texas. This is also the Defendants law firm.

I have received information that a large number of the Federal Judges and U.S. Attorneys who have been appointed to the bench since the Reagan Administration



started were interviewed by attorneys in Andrews, Kurth office before they were appointed and approved by the U.S. Senate.

I have also received information tht the reason no federal indictments have been made as a result of the corruption involving the Hughes Estate was because Mr. William French Smith, an attorney from the law firm of Gibson, Dunn and Crutcher, of Los Angeles, CA, who represented Richard Gano in the Hughes Estate in California, also represented Lummis and Summa Corp., was the U.S. Attorney General; that Carol Dinkins, the wife of the Attorney-ad-Litem, Theodore Dinkins, was the number two person in the U.S. Attorney General's Office and that Edwin Meese, III has taken no action pertaining to the Hughes Case on the corruption and fraud in the Hughes cover-up.

I have also been advised by phone that if the plaintiffs or I mentioned anything illegal on the part of the defendants' attorneys or the attorneys represent-

ing the Barbara Cameron Group and/or the Bissells, my hands would be tied behind my back and I would be floated down the Houston Ship Channel. This is not scrupulous.

Under the Texas law all attorneys who have acted in good faith on Estate matters are supposed to receive their legal fees for working in the Hughes Estate Case. The attorneys for the Plaintiffs have not received any monies from the Estate because of the objections from the Attorney-ad-Litem, Ted Dinkins, upon instructions of Judge Gregory, and the other attorneys have received about \$25,000,000 (Million) in fees more or less according to the Houston, Texas newspapers. This is not scrupulous regard for the rights of the plaintiffs.

The attorneys for the defendants advised this Honorable Court that the Secret Settlement Agreements were a part of the record in the Hughes Estate Case since they were originally made. My attorneys and I have continually checked all the records and did not



locate any of these Secret Agreements, even after diligent search and questioning of clerks and opposing attorneys, judges, administrator's attorneys, as well as, some media people who were advised no such agreements existed. If they became a part of the record then they were withheld from the plaintiffs and their attorneys. Judge Pat Gregory and the defendants' attorneys denied on numerous occasions that there were any such agreements therefore it is obvious that the Agreements were not part of the record until the one-sided hearing involving Avis and Rush Bissell. I understand now there have been fourteen (14) Secret Agreements since Hughes death and we have only been able to get copies of three (3) such secret agreements.

I respectfully request this Honorable Court to require the defendants to show this Honorable Court the fourteen (14) Secret Settlement Agreements in an effort to ascertain whether this Honorable Court has been lied to regarding same. If the said Agreements were filed then they would have been marked filed by



the Probate Court Clerk. If there are such agreements then the court should ascertain why they were not sent to the plaintiffs' attorneys, ever. And why Plaintiffs were lied to for $5\frac{1}{2}$ years about the non-existence of all these secret agreements.

To the best of my present recollection the Defendants' attorneys told this court that all twenty-two (22) heirs that received monies therefrom were all blood kin. This is a misrepresentation as show above.

I also have had numerous threats, 2 indirectly and several by phone stating they would get me one way or the other and in one phone call by the old familiar voice who said I would scratch with the chickens before I would ever get a dime out of the Hughes Estate.

One caller close to the case said with one phone call that we would be in serious trouble. I asked what kind of trouble or why? They said they could get our lawyers, too. This was really scary, because this caller sounded very serious.

I was subpoenaed as a witness for the Heirship Trial and was sequestered away from the trial. The day that I was to testify, Mr. Freese filed a brief which in part stated that it would only confuse the jury and would probably cause a bad verdict if they were to hear about Rubert Hughes having the mumps which, according to family history, had caused Rupert to be sterile and unable to father children. This would have brought a verdict that would have excluded Mr. Freese's clients and Avis and Rush Bissell. Because of this brief, Judge Pat Gregory called me into his chambers together with all the lawyers involved in the case and questioned me. Judge Gregory decided that I did not have anything new to add to the case or that the jury needed to hear and therefore, refused to let me be called to testify before the jury. As a matter of facts, only 2 of the witnesses for our group, the true blood kin, were allowed to testify before the jury. All the other witnesses which were testifying for our side were allowed to testify only while the jury was out of the courtroom, consequently,

their testimony was never heard by the jury. This was unfair, unscrupulous and gave the jury a one sided view of the case, which is apparently what had been planned by the Judge, the Administrator, the Guardian ad Litem and the others on that side of the case, as the jury was allowed to hear only one side of the case and did not have all the available relevant evidence from both sides of the Heirship Case with which to decide on a proper verdict in the Heirship Trial.

To illustrate the obstruction of justice, the author, Susan Finstad, and associate attorneys of Dinkins of "Heir Not Apparent" said on page 159 that "Yet, as Dinkins's investigators knew, there was much more to the Hughes Family Tree than ever came out at the much ballyhooed trial. The most disturbing and intriguing facts and circumstances never even made it to Court. They remained hidden from view, locked in file drawers for safekeeping, or dancing in the heads of Dinkins' proteges."

The aforesaid misrepresentation by Mr. Cordes may have been innocent because he may have been lied to but they were still misrepresentations from start to finish. The Heirship case was a sham and a shame the way it was mishandled and with the cover-up.

The "Heir Not Apparent" author clearly states that ninety-five (95%) percent of the evidence in favor of the plaintiffs was withheld, no real legitimate trial was ever had.

The Affiant respectfully requests this Honorable Court to reverse and remand this case to the lower Court with instructions to allow the Plaintiffs to amend their complaint.

s/WILLIAM A. JONES _

WILLIAM A. JONES



Sworn to before me this

18th day of January, 1988.

s/ _____

NOTARY PUBLIC

My commission expires: 8-28-90

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

VICTOR L. GANOE, ET AL

Plaintiffs-Appellants

vs.

Docket No. 87-7546

WILLIAM LUMMIS, Temporary Administrator
of the Estate of HOWARD R. HUGHES, JR.

AFFIDAVIT

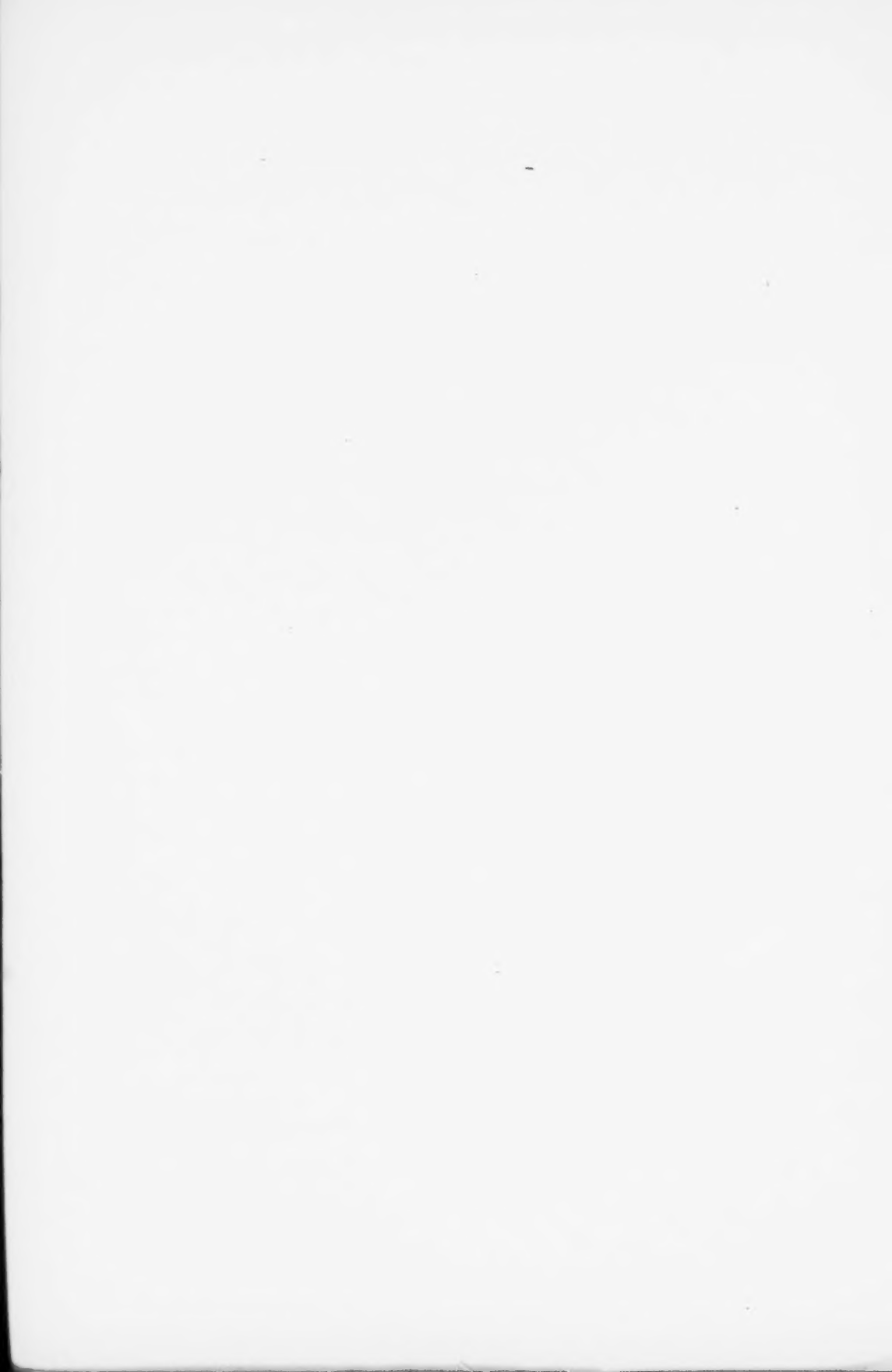
STATE OF TENNESSEE

COUNTY OF RUTHERFORD

I, C. Alex Meacham, After first being duly sworn
makes oath as follows:

I was retained by Mr. William A. Jones to represent the Jones Group just after the death of Mr. Howard R. Hughes, Jr. I am familiar with all the pleadings in the various cases involving the Hughes Estate.

I, as Attorney of record for the Hughes Heirs represented by W. A. Jones, did not receive proper



notice of the Court hearing in the Probate Court of Harris County, Texas, pertaining to the Avis and Rush Bissell Heirship hearing. There was no jury trial on the issues pertaining to Avis and Rush Bissell.

We were not officially notified but heard unofficially that the Judge was holding a hearing to make Avis Bissell McIntire and Rush Bissell, who called himself "Hughes", kin as children of Rupert Hughes under the theory of "Adoption by Estoppel" and thus they would become 1st cousins of Hughes even though they were never a part of the Hughes Family, Avis and Rush made no contact with Rupert Hughes for more than 20 years and testimony was that Rubert Hughes said Avis and Rush were impostors and that "hell no they were not his children," more than 40 years before any question did arise about these subject persons and Avis and Rush hated Rupert Hughes according to the Court testimony, and he hated them, and Avis and Rush said they never expected any inheritance from Rupert or Howard Hughes.

I appeared in Part 2 Probate Court, Harris County, Texas before Probate Judge Pat Gregory, and even though the Attorney-ad-Litem, Dinkins did not wish to be heard, I objected to the hearing being held without our opportunity to contest Avis and Rush's claim of kinship by Adoption by Estoppel and to present contrary evidence and witnesses. Judge Gregory allowed the hearing to continue but held that Avis Bissell and Rush Bissell could only receive part of the Estate by virtue of their secret agreement with Barbara Cameron, Elspeth Depould and Agnes Roberts and Lummis, if they were successful on our appeal of their decision in Probate Court of Harris County, Texas, which we believe was obtained by Attorney-ad-Litem, Ted Dinkins', and Lummis', as heir and administrator, collusion with Camerson, Depould, Roberts, McIntire and Bissell and wrongful breach of Dinkins' fiduciary duty as attorney-ad-Litem in concealing a great amount of evidence which, we believe strongly, would have changed the verdict in favor of our Hughes Family members who are entitled to 50% of

the total Hughes Estate as next of kin and closest heir-at-law as second cousins.

Mr. Theodore Dinkins, Attorney-ad-Litem, Judge Pat Gregory, Lummis's attorneys and others denied there were any Secret Settlement Agreements splitting up the Hughes Estate Pie numerous times during the 5 1/2 years before the Heirship Trials.

Judge Pat Gregory ordered Jones and his Group over all their genealogical research and family history documents and evidence and work and all their information pertaining to the case to the Attorney-ad-Litem, Ted Dinkins: when we advised Dinkins about the court records in Manhattan (which had for years been misfiled and indexed under "A"s instead of "H" for Hughes otherwise we feel this would have disappeared too except that by constant hard work researching all over the USA, Jones found this important file before it had been tampered with and files were stolen or missing as has happened over and over again) the Special Master's



Report was obtained by Dinkins but withheld from the trial jury and we were told by Dinkins that he didn't get it although his assistant, Susan Finstad's book "Heir Not Apparent" says he did get it; and the Court records in Detroit, Michigan, pertaining to ADELAIDE BISSELL v. GEORGE BISSELL, JR. divorce were withheld from the plaintiffs and their attorneys and the jury when he had this record which would have been material.

Ted Dinkins obtained records from N.Y. on the divorce of Rupert Hughes vs. Agnes Hughes that would have been very material that Cameron, Depould, Roberts were no kin - nor blood kin to Rupert Hughes nor Howard Hughes, Jr. the decendent. But these files never got to the jury.

Ted Dinkins, legal Associate on this Estate Case, Susan Finstad has verified in her Book "Heir Not Apparent" page 381 that these records existed. But the jury never heard about them.

Judge Gregory ordered in the presence of Attorney-

ad-Litem, Ted Dinkins and myself and W. A. Jones that the Attorney-ad-Litem would make all information and evidence that he gathered available to us without the need of a Court Order. But when we went to Dinkins Office and asked to see what evidence Dinkins had he showed us, according to his law partner, Susan Finstad's book, only about 5% of what evidence he had collected, but he told us that he was showing us all the material evidence he had on the Hughes Case. With the evidence we now know he had, we strongly believe we could have won the jury trial that instead held for Barbara Cameron, Elspeth Depould and Agnes Roberts. The jurors advised me it was a close decision anyway. But the jury never knew that Avis and Rush Bissell were claiming to be Rupert Hughes's children. This was not at issue before the Heirship Case. Avis and Rush Bissell's lawyers were there running the show for the purpose of proving up the Cameron Group so they could collect under the terms of their secret agreements with the administrator.

Judge Gregory made a derogatory statement while

the case was in progress that was picked up by the news media, during and in the middle of the Heirship Jury Trial, that the Jones group of Howard Hughes, Jr.'s 2nd cousins had a weak case before any evidence for our clients was ever presented and which statements the Heirship jury could have heard, seen and read in the newspapers while the jury was in full session since they were not sequestered. This statement was an extremely biased statement to have been made especially in light of the Heirship Case being in progress and just days before any verdict was given. Further our Hughes Family Heirs who heard it on the Houston Radios over and over couldn't believe what they were hearing and our Hughes Family members who came from all across the USA were very distressed at Judge Gregory's very biased statements which in part helped sway the jury and the case in a predetermined court and helped solidify various secret agreements. It was an outrage. Also, Judge Gregory put our people under gag order but let the other side talk to the new media.



In 1983 I went to Las Vegas to ask the court not to disburse funds because the U. S. Supreme Court Special Judge McRee had ordered a stay while a question of tax domicile was decided. While there, an unfortunate and extremely unusual incident took place in the Las Vegas Court, Judge John Mendoza wouldn't let me say anything and threatened me with jail if I did even though we were properly before the court, if I even stood up to say anything and he went ahead and heard attorney William E. Miller of Andrews-Kurth Law firm and distributed \$8,000,000.00 (Eight Million Dollars).

In the Appeals Case, we plead with this Honorable Court to grant judgment in favor of the Plaintiffs as they are next of kin and are the closest true blood Hughes Family members to the Decedent. 82 are second cousins to Howard R. Hughes, Jr. and those holding with them and under them.

I offer Attorney Susan Finstad's affidavit as to

the facts in her book being true as to the facts of the Howard Robard Hughes Heirship and research attached hereto my affidavit.

In all my years of practice of law, I have never known such a crooked case and a so-called Heirship Case which was a complete shame, sham and fraud. This Heirship should be tried all over again with all the evidence being presented to the jury for its consideration.

S/C. ALEX MEACHAM

C. Alex Meacham

Attorney-at-Law

Sworn to and subscribed before me

this 18th day of January, 1988.

NOTARY PUBLIC

2/ commission expires: 8-28-90



ORDER OF DISCONTINUANCE S 18-A Form 8 A 2000 12.19 W & H

At a session of the Circuit Court for the County
of Wayne, In Chancery, convened and Held at the Circuit
Court Room in the City of Detroit, on the 14th
day of Dec in the year one thousand
nine hundred and fourteen

Adelaide Bissell

Complainant.

vs.

No. 28014

George Bissell

Defendant.

This cause being called in open court for hear-
ing, the solicitor for complainant consenting thereto,
it is ordered and decreed that the Bill of Complaint
therein be dismissed without cost.

s/

Circuit Justice



E-314 BK

No. A 059970

STATE OF MICHIGAN,)

ss.

County of Wayne)

CERTIFIED COPY - "LAW"

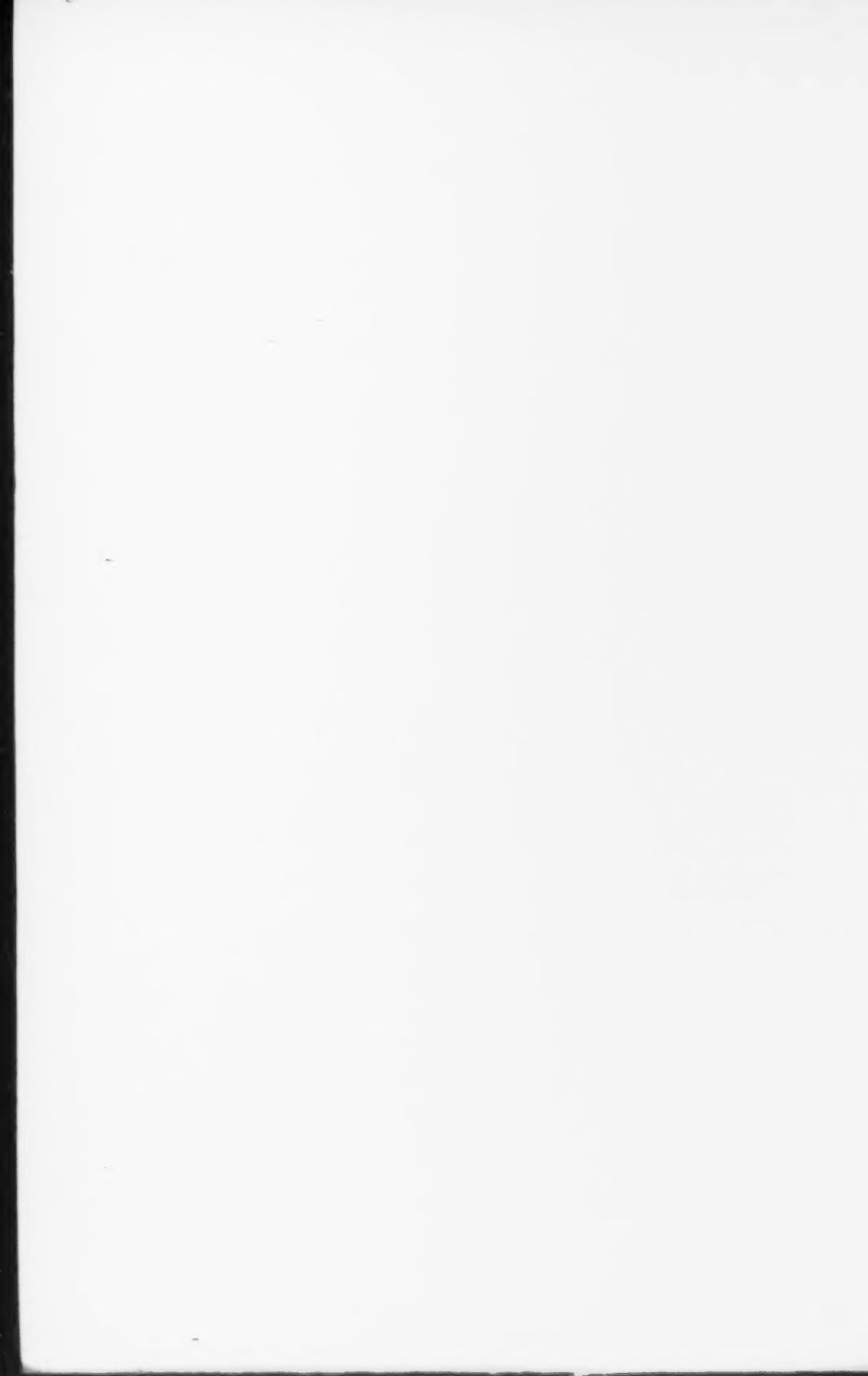
I, JAMES R. KILLEEN, Clerk of Wayne County, and
Clerk of the Circuit Court for the County of Wayne,
do hereby certify, that the above and the foregoing
is a true and correct copy of 28014

ORDER OF DISCONTINUANCE

entered in the above entitled cause by said Court,
as appears of record in my office. That I have
compared the same with the original, and it is a
true transcript therefrom, and of the whole thereof.

In Testimony Whereof, I have hereunto set my
hand and affixed the seal of said Court and County,
at Detroit, this day of JUN 19 1987 A.D. 19__

JAMES R. KILLEEN, Clerk



JAMES R. KILLEEN

Wayne County Clerk

201 City-County Building

DETROIT, MICHIGAN 48226

DATE JAN. 5, 1977

IN RE. CASE NO. 28014 CB

LIBER PAGE

(A) RECORD OF DIVORCE of ADELAIDE BISSELL

from GEORGE EDGAR BISSELL, JR.

Judgment granted by Judge

YOUR ATTACHED INQUIRY IS ANSWERED BY MARKED
PARAGRAPH BELOW:

1. A check of the records in this office from

 to

does not disclose divorce proceedings involving the above named parties. It is advisable to contact the Michigan Department of Health, Vital Records Section, Lansing 4, Michigan



where all such records are kept for the entire State.

2. Before we can check our records, it will be necessary for us to have full names of both parties, the place and date divorce was granted. If you can supply this information, fill in Paragraph (A) above and we will check further.
PRINT OR TYPE ALL INFORMATION.

3. A check of the above file reveals following action has been taken:
Jan. 6, 1915 - Order of discontinuance signed & filed no other case on record.

--

this case is not
provide you with
a copy

of the discontinuance. - \$.40 per page

4. Cost of copies of documents is as shown below:
Kindly forward cashier's check, certified check, or money order ONLY, made payable to



JAMES R. KILLEEN, WAYNE COUNTY CLERK, 201
City-County Building, Detroit, Michigan,
48226. NO PERSONAL CHECKS WILL BE ACCEPTED.

(One copy only of all papers pertaining to
veterans' affairs is furnished without charge.
There is the usual charge for additional
copies.)

5. Please include large, stamped, self-addressed
return envelope. If you desire mail sent
airmail or special delivery, include suffi-
cient postage on envelope.
6. RETURN ATTACHED PAPERS FOR IDENTIFICATION
PURPOSES IF THERE IS OCCASION TO REVIEW THIS
MATTER FURTHER.

REFUND OF \$ _____ enclosed.



Wayne County Clerk
201 City-County Building
DETROIT, MICHIGAN 48226

DATE DEC 15, 197

IN RE. CASE NO. 28014

LIBER PAGE

(A) RECORD OF DIVORCE of Bissell, Adelaide
from Bissell, George

Judgment granted by Judge

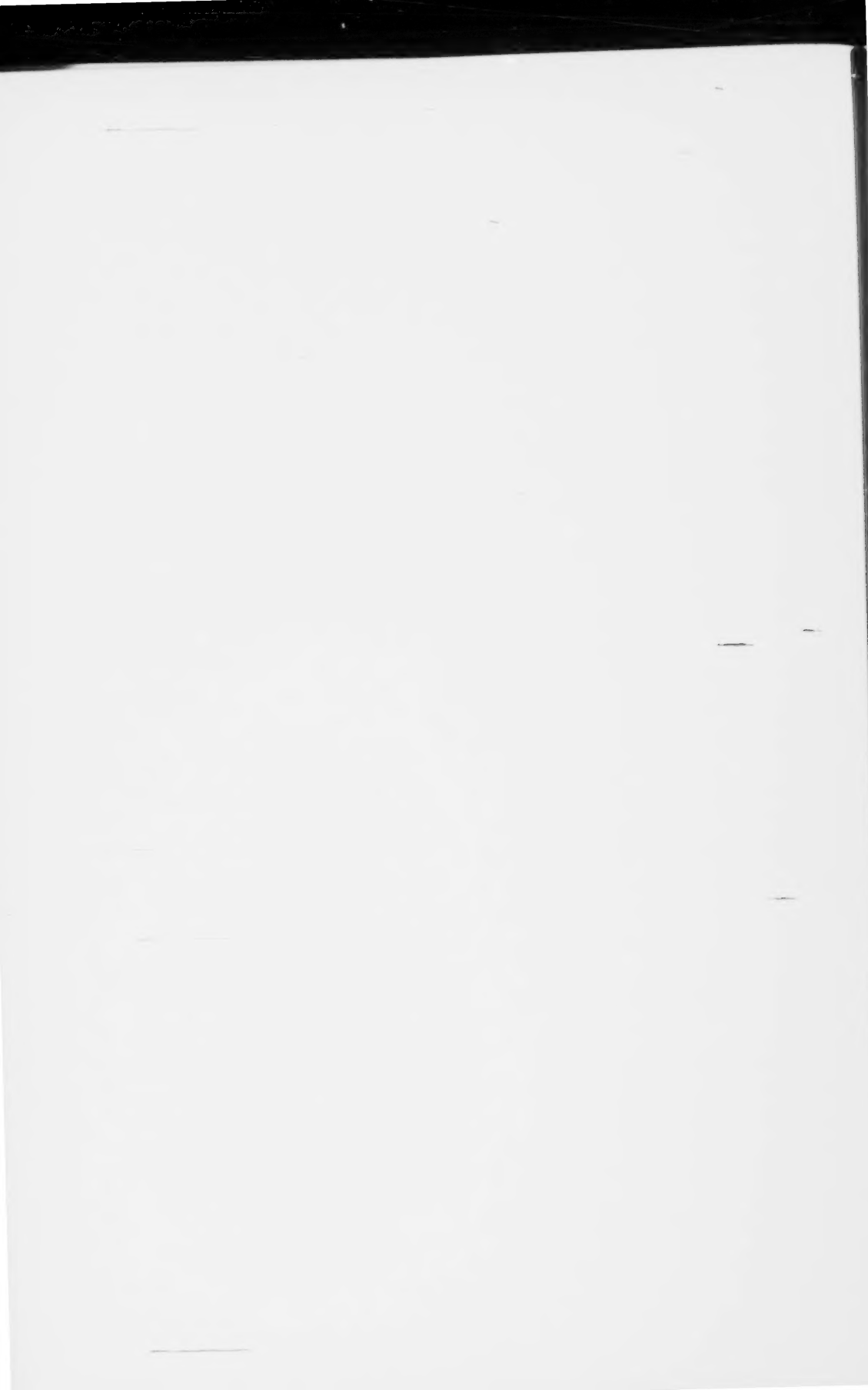
YOUR ATTACHED INQUIRY IS ANSWERED BY MARKED
PARAGRAPH BELOW:

1. A check of the records in this office from
 to
does not disclose divorce proceedings involving
the above named parties. It is advisable to
contact the Michigan Department of Health,
Vital Records Section, Lansing 4, Michigan
where all such records are kept in the entire
State.

2. Before we can check our records, it will be necessary for us to have full names of both parties, the place and date divorce was granted. If you can supply this information, fill in Paragraph (A) above and we will check further. PRINT OR TYPE ALL INFORMATION.

There was no Judgment
granted - Jan 6, 1915 an Order
of Discontinuance was signed
and filed.

4. Cost of copies of documents is as shown below: .
Kindly forward cashier's check, certified check,
or money order ONLY, made payable to JAMES R.
KILLEEN, WAYNE COUNTY CLERK, 201 City-County
Building, Detroit, Michigan, 48226. NO PERSONAL
CHECKS WILL BE ACCEPTED. (One copy only of all
papers pertaining to veterans' affairs is fur-
nished without charge. There is the usual
charge for additional copies.)



5. Please include large, stamped, self-addressed return envelope. If you desire mail sent airmail or special delivery, include sufficient postage on envelope. —

6. RETURN ATTACHED PAPERS FOR IDENTIFICATION PURPOSES IF THERE IS OCCASION TO REVIEW THIS MATTER FURTHER.

Ck. No.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS

In Re Application of

O. THEODORE DINKINS, JR., ESQ., Attorney
ad Litem for the Unknown Heirs of Howard
Robard Hughes, Jr., Deceased

For an Order of the Court Pursuant
to Section 235 of the New York
Domestic Relations Law

ORDER

DAVIS POLK & WARDWELL

Attorneys for O. THEODORE DINKINS, JR., ESQ.

1 CHASE MANHATTAN PLAZA

BOROUGH OF MANHATTAN,

CITY OF NEW YORK, N. Y. 10005

David Oxman

handled In Re Dinkins

QUEENS COUNTY

COUNT CLERK

AUG -6 1981

F I L E D

14644

1 9 8 0



a Special Term, Part 1 of the
Supreme Court of the State of
New York, held in and for the
County of Queens, at 88-11
Sutphin Boulevard, Jamaica,
New York, on the 4th day of
August, 1981.

PRESENT: HONORABLE ALBERT H. BUSCHMANN, JUSTICE

-----X

In Re Application of :

O. THEODORE DINKINS, JR., ESQ., Attorney : ORDER

ad Litem for the Unknown Heirs of : Index No.

Howard Robard Hughes, Jr., Deceased : 14694/80

For an Order of the Court Pursuant :

to Section 235 of the New York :

Domestic Relations Law :

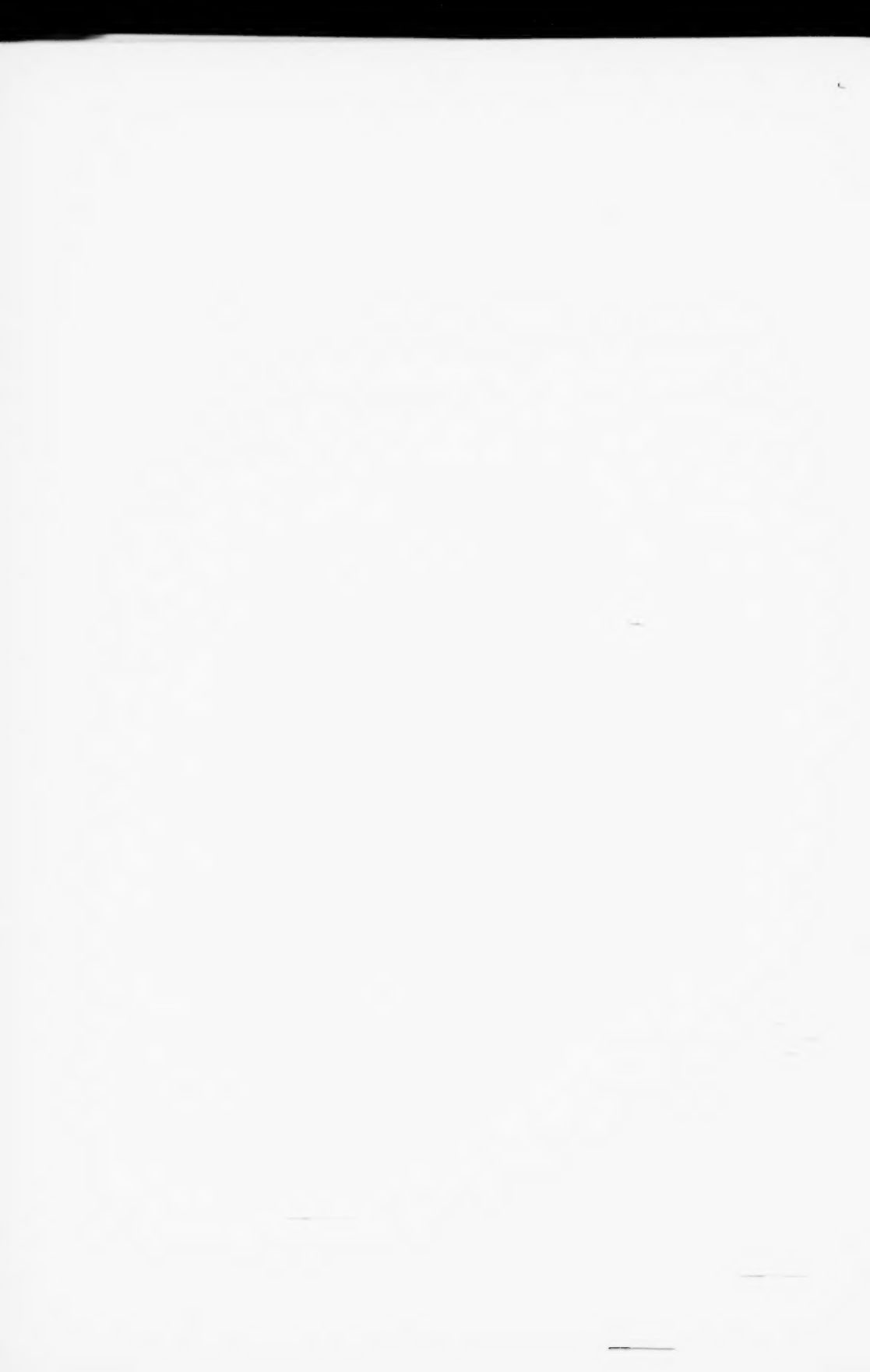
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O. THEODORE DINKINS, JR., ESQ., Attorney ad
Litem for the Unknow Heirs of Howard Robard Hughes, Jr.,



Deceased, by his attorneys Messrs. Davis Polk & Wardwell, having duly moved for any order pursuant to New York Domestic Relations Law Section 235 to obtain Court certified and exemplified copies of the Court file in Hughes v. Hughes, No. 29203-04, a matrimonial proceeding maintained in this Court, upon the ground that said Court file is necessary to complete the evidence at trial on the issue of heirship in the Estate of Howard Robard Hughes, Jr. before the Honorable Pat Gregory of the Probate Court No. 2 of Harris County, Texas, and said motion having regularly come on to be heard,

Now, upon reading and filing the order to show cause dated July 30, 1981, the affidavit of O. Theodore Dinkins, Jr., Esq. Attorney ad Litem for the Unknown Heirs of Hward Robard Hughes, Jr., Deceased, sworn to the 29th day of July, 1981, and Exhibit A annexed thereto in support of the motion, and there being no opposition on the part of Mr. John J. Durante, County Clerk of



Queens County,

Now, upon motion of Messrs. Davis Polk & Wardwell, attorneys for the movant, it is

ORDERED, that the motion for an order permitting O. Theodore Dinkins, Jr., Esq. and his attorneys, Messrs. Davis Polk & Wardwell, on his behalf to obtain Court certified and exemplified copies of the documents comprising the Court file in Hughes v. Hughes, No. 29203-04, is granted in all respects.

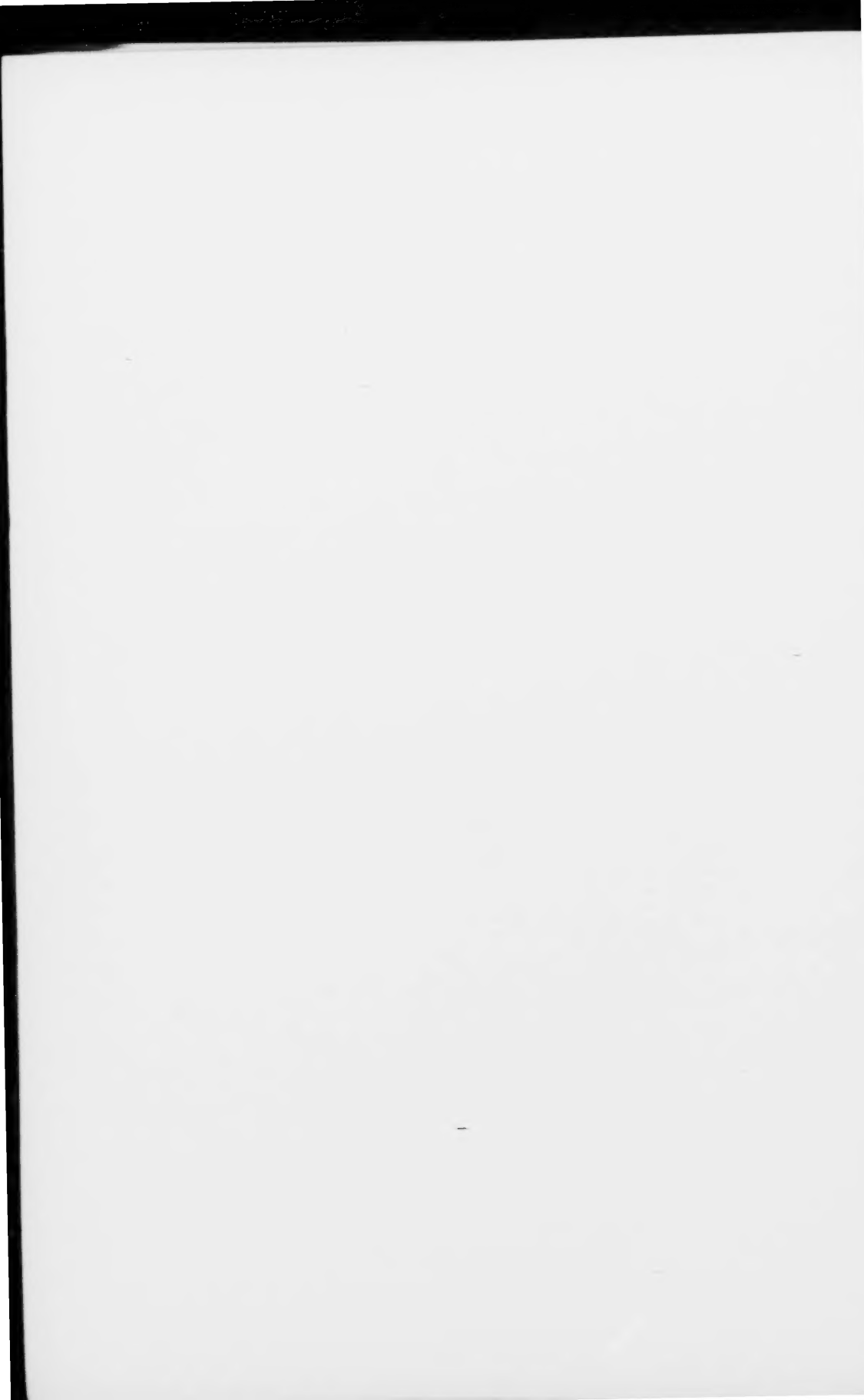
Enter,

* GRANTED

AUG 4 1981

s/ _____

CLERK



A F F I D A V I T

STATE OF TEXAS)

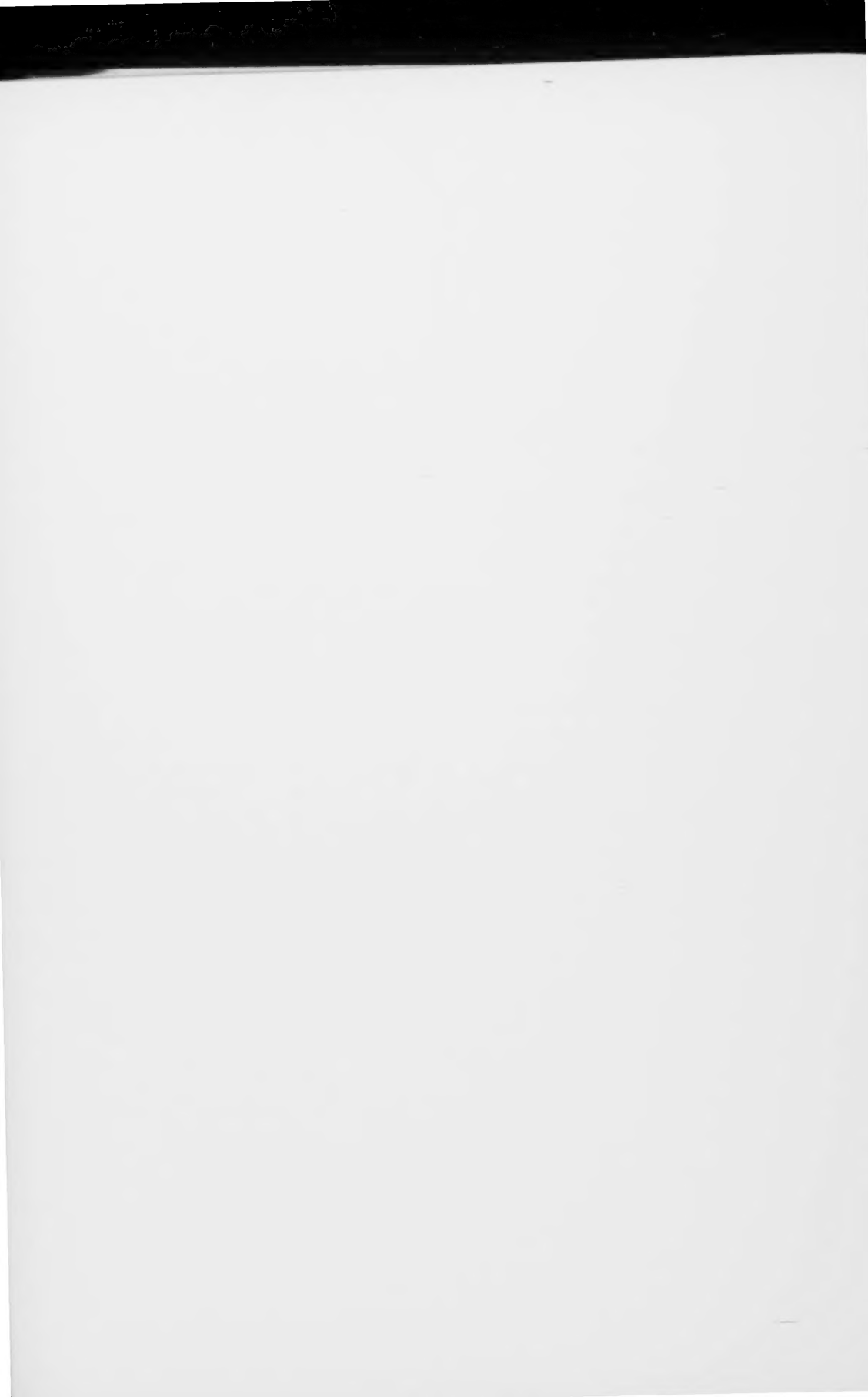
COUNTY OF) SS:

SUZANNE FINSTAD, being duly sworn deposes and says:

1. That she is a duly licensed Attorney at Law and an Author of Heir Not Apparent who resides at 86 Angelina Lane, Conroe, Texas 77302.

2. That all of the facts contained in the book Deponent wrote, entitled HEIR NOT APPARENT are true and have been proven and documented; and Deponent incorporates her book in her Affidavit herein.

3. That, if published, your Deponent can write and submit a second book regarding the Hughes' Estate Case investigation and the Probate Court proceedings therein which would be even more revealing because it would contain facts which were gathered, not only during the time your Deponent was Assistant to the Attorney - Guardian ad Litem, THEODORE DINKINS, ESQ., but also



subsequently that such facts and documentary work concerning the Howard R. Hughes Estate Cases.

4. Also, that Writer has in her possession approximately 30 number of pictures or photographs on the Hughes Family that Deponent can use in a new book concerning the world famous flyer, Howard R. Hughes's Estate.

or can obtain (SF)

5. That the Deponent has in her possession approximately 50 number of different pictures or copies of pictures or photographs of Rupert Hughes, the Writer and Elspeth Hughes Lapp either pictured alone or with each other or with others that Deponent can use in a new book concerning the Estate of the Famous Howard R. Hughes, Jr.

6. It would take Deponent approximately 5 months to assemble, write, submit and present to agent a 250 page book suitable for publication if suitable contractual agreements could be worked out with an acceptable publisher and contracts signed and suitable



financial terms mutually acceptable to this Writer.

s/

SUZANNE FINSTAD, WRITER

Sworn to before me this the

4 day of April, 1987.

s/

commission exp. 8-5-89



(TAKEN FROM...)

HEIR

NOT

APPARENT

SUZANNE FINSTAD

★

TEXAS MONTHLY PRESS



HEIR NOT APPARENT

of the adoption claim, while Rush and Avis closely examined the identity of the "Hughes girls'" mother.

Somehow, Lummis pulled this disparate group together and, a year after the consummation of the first settlement agreement, executed a "supplemental agreement" to include the two "informally" adopted children of Rupert Hughes. This was quite a legal coup for Rush and Avis, considering they had no papers to support their claim, and that they had made no attempt to inherit a portion of Rupert Hughes' estate some twenty years earlier. And yet, despite the fact that Rush and Avis had what many considered to be a very shaky claim, Barbara Cameron and her sisters agreed to concede 6 percent of their earlier 25 percent share to include Rupert Hughes' stepchildren in the private settlement contract. This left the granddaughters with 19 percent of Howard Hughes' estate. From the maternal heirs' share 3.5 percent was trimmed to cut in Rush and Avis. When all was said and



done, these two never-adopted stepchildren of Rupert Hughes had negotiated an impressive 9.5 percent of the Howard Hughes fortune. How and why did this come about? In the language of the revised agreement, "the parties understand that the question of law and facts related thereto could take many years to resolve through litigation, that protracted litigation necessarily would involve serious adverse consequences to each of them, and it is in the best interests of all parties hereto to resolve these conflicting claims between themselves."

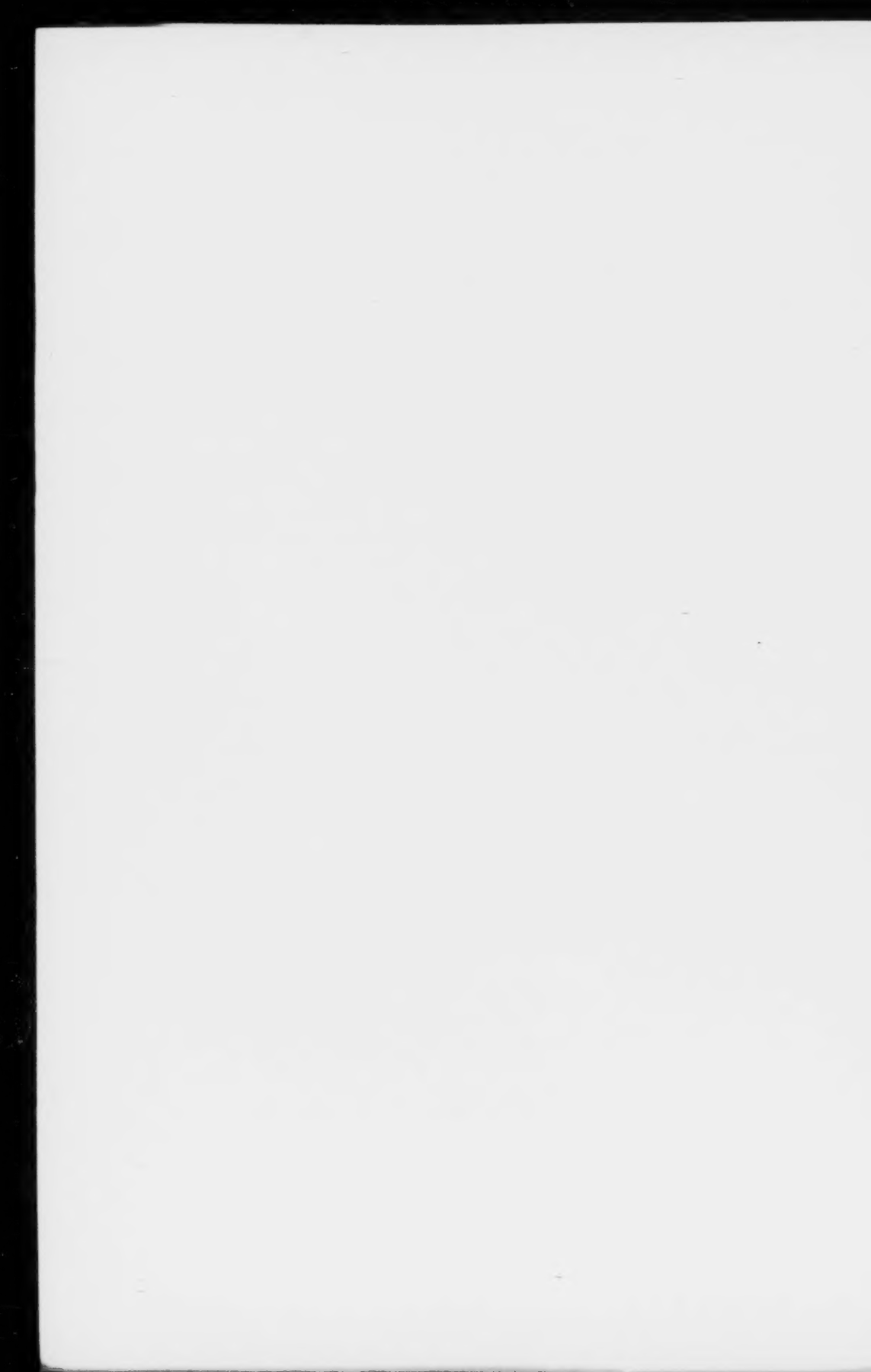
That was the official line. But does it adequately explain why the granddaughters of Rupert Hughes would voluntarily settle for 19 percent of the Howard Hughes estate to take part in such an agreement, knowing that the paternal heirs were entitled to a full 50 percent under the laws of the state of Texas? Thirty-one percent of a billion-dollar fortune is no small concession. And why did they agree to relinquish 6 percent from their share in the first settlement agreement to two



step-children they had earlier discredited? Did it mean, as some said, that they had some doubt about their own relationship?

Any why, in turn, would Rush and Avis settle for a mere 9.5 percent of the estate when, under Texas law, they would be entitled to almost one-third of Hughes' fortune as paternal first cousins if they could prove they were equitably adopted by Rupert Hughes?

Was there, as some have suggested, a conspiracy of silence between the alleged paternal heirs? Did the three granddaughters and the two stepchildren of Rupert Hughes "buy" each other's silence in exchange for a guaranteed percentage of the estate? These were the accusations hurled at them by their opposing counsel at the heirship trial in 1981. Did each suppress damaging evidence about the other's claim in exchange for the right to be included in the agreement, as their foes implied in court? Certainly the interfamily fight stopped abruptly after the supplemental agreement was



All in the Family

executed. Rush and Avis gave up their legal battle to declare Hughes a resident of Texas, and the rumors and innuendoes from all sides came to a screeching halt. Was the settlement agreement, as one adversary described it, a "cozy little party"?

Perhaps most important of all, how and why did the maternal heirs, represented by Andrews, Kurth and Will Lummis, determine that these five individuals were indeed the legitimate paternal heirs of Howard Hughes, Jr.? Why were they cut in on the settlement agreement?

The inheritance claims of Rupert 'Hughes' granddaughters and step-children were violently disputed by a number of people with varying degrees of proof. Why, then, would Lummis and his cousins choose to settle with a group whose family connection was so controversial? An attorney from Andrews, Kurth who represented the estate once testified that the firm had investigated these claims to their satisfaction. Yet



Barbara Cameron and her two sisters were included in the first settlement agreement just three months after Hughes' death. The ad litem investigation, in contrast, continued for over five years. Was three months adequate time to resolve any doubts about the Hughes family tree? Ollie Blan, an attorney representing a different branch of the Hughes family, suggested otherwise. During the heirship trial in 1981, he questioned Andrews, Kurth partner William Miller about his firm's investigation of the Cameron claim. Though Miller was, by his own description, the "lead attorney" in charge of the Hughes estate administration, he admitted under oath that he had never even read the deposition testimony of Hughes granddaughter Barbara Cameron. By pointing out this omission Blan implied a general inattention to the investigation of the paternal heir's claim by the Andrews, Kurth counsel. Because Miller never read Cameron's deposition, Blan continued, he was also unaware that she had testified that Rupert Hughes once told her

"That's a damn lie!" when it was suggested that Rush Hughes was his son. This put Miller's firm in the unusual position of settling with two distinct sets of alleged paternal relatives of Howard Hughes, each of whom had at one time questioned the inheritance rights of the other. (Since the execution of the supplemental agreement, the granddaughters and Rush and Avis have supported each other's position, at least publicly, and deny they ever cast aspersions on the other's claim.) The circumstances behind the agreement are made even more complex by the fact that hundreds of individuals openly discredited both the granddaughters' and Rush and Avis' right to inherit, and instead maintained that an entirely different set of individuals--distant Hughes cousins--were in fact the bona fide paternal heirs of Howard R. Hughes, Jr.

All of this made Dinkins' heirship investigation and the upcoming trial to determine Hughes' paternal relatives even more intriguing. William Lummis and Andrews, Kurth had privately settled 28 percent of



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Howard Hughes' estate on five individuals whom they supported as Hughes' paternal heirs, and they were bound by the terms of the settlement agreement to pay this group their agreed percentage no matter what the outcome of the trial to determine Hughes' paternal heirs scheduled for August 27, 1981, in Judge Grogory's court.

Without a doubt Ted Dinkins was in a critical position. As the attorney ad litem, it was his official responsibility to present to the court a list of Hughes' paternal heirs, and to conduct a thorough investigation not only to attempt to locate any unknown paternal heirs, but also to prove or disprove the claims of the five who had been privately acknowledged as the legitimate and only heirs on the Hughes side of the family. What if Dinkins' investigation led to the discovery of another paternal heir? Or if he uncovered evidence to discredit any of the five alleged paternal heirs participating in the settlement agreement?



These were not idle speculations of fanciful possibilities. They were important, valid questions. It was altogether possible that Will Lummis had cut a deal with the wrong people. And it was up to Ted Dinkins to find out.

AUTHOR'S NOTE:

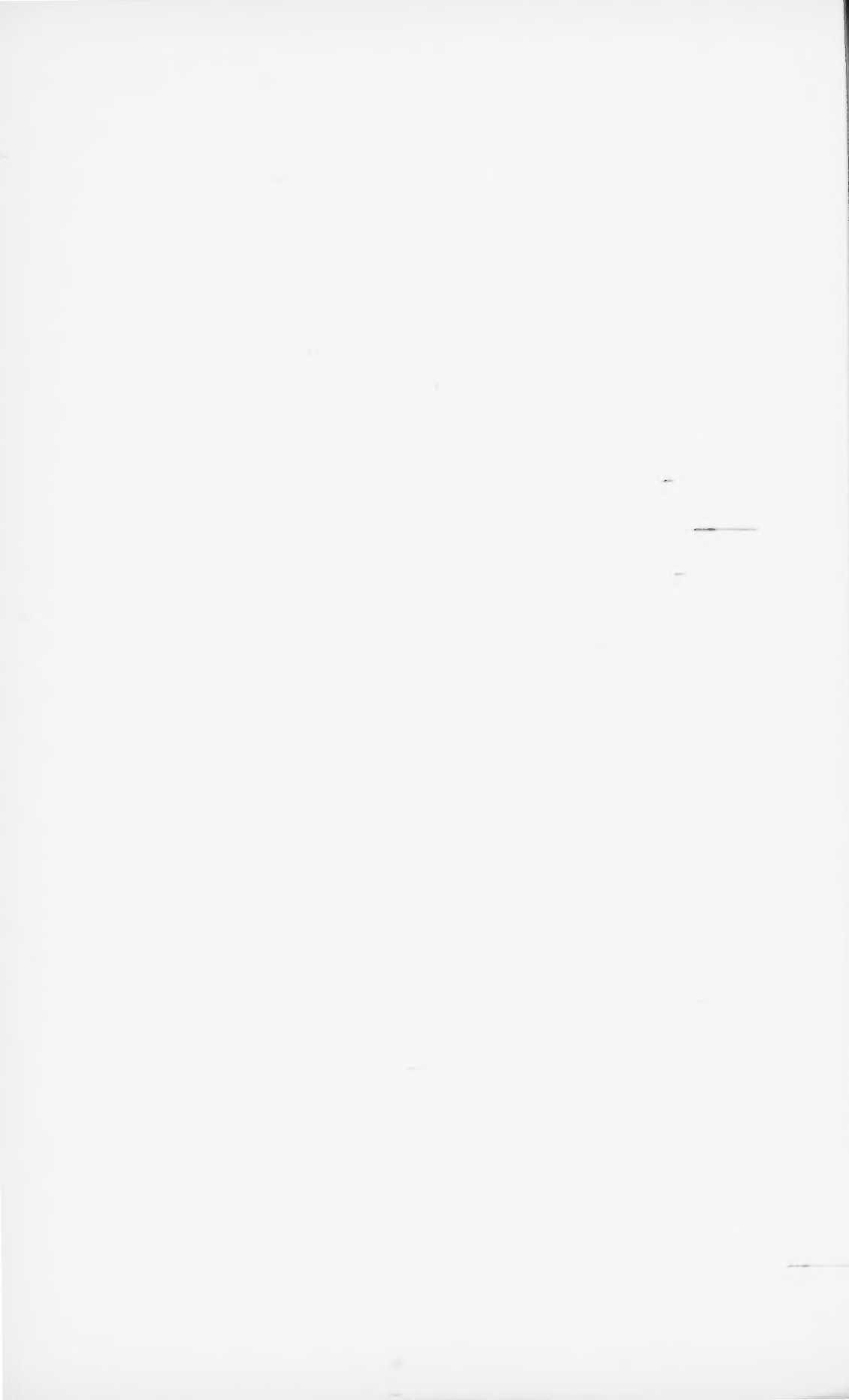
Going into the trial to determine Hughes' paternal heirs, a Texas jury had previously determined that Howard R. Hughes, Jr., was a legal resident of Texas at the time of his death. California subsequently sued in the United States Supreme Court. The Supreme Court refused to hear it but suggested that the estate file an "interpleader" action instead. An interpleader is a legal device to consolidate conflicting claims over the same issue into one lawsuit. Since more than one state claimed Hughes as a resident, an interpleader was an appropriate alternative.

The interpleader action was instituted in Austin,

Texas, shortly after the Supreme Court's advisory opinion was issued. That case was on appeal at the time of the heirship trials. Consequently, Texas was the only state to have officially declared Hughes a legal resident at the time the heirship determination took place.

(Since the heirship trials, the domicile case again reached the United States Supreme Court. This time, the Court agreed to hear the case, and should render a decision by fall 1984.

This is a great victory for the heirs. By agreeing to rule on the domicile question, the Supreme Court will make one binding decision



Family Fued

heirs on the Hughes side of the family might not be so apparent. Howard Hughes, Sr.'s brothers and sisters had many strange secrets in their past, some of which Dinkins' sleuths had uncovered, several of which they suspected but could not prove. In the end, for all his colleagues' doubts and uncertainty, Dinkins offered no objection whatsoever to the inheritance claims of Barbara Cameron and her sisters. At the close of the trial, a jury determined that Barbara Lapp Cameron, Elspeth Lapp DePould, and Agnes Lapp Roberts were the legitimate granddaughters of Rupert Hughes, the paternal heirs-at-law of Howard R. Hughes, Jr.-and Ted Dinkins supported that position.

Despite five years of extraordinary persistence and tenacity in the pursuit of information about the Hughes family, Dinkins spent only a few hours presenting his evidence, introducing perhaps a scant 5 percent of the material he and his colleagues had accumulated throughout their investigation. The jurors and

the court therefore saw little of the information that might have caused them to dispute (or at least raise questions about) the granddaughters' right to inherit. What was the explanation? Why did the jury not see the stacks and stacks of papers and miscellany acquired during the heirship investigation to consider before returning its verdict?

The explanation, according to Dinkins, could be found in the rules of evidence. Despite to volumes of data he had accumulated, only a small percentage was legally admissible as "evidence" in a court of law (without some exception or a special ruling by the judge.). The rest, he maintained was varred by one or more of the rules of evidence. Most of the information that his associates had gathered and analyzed, he reasoned, was simply not admissible in court, newspaper articles, interviews, school records. The hodge-podge of information his team had studied and puzzled over for half a decade was either hearsay, or could not be admitted because of some legal technicality.



Most of their suspicions and misgivings about the Hughes family were based on "circumstantial" evidence, and Dinkins chose to introduce only "documentary" evidence in his presentation to the jury. Though his two colleagues had formed the clear impression that there was something strange where Rupert's supposed daughter Elspeth (the Lapp sisters' mother) was concerned, they lacked the hard evidence to prove it-in court anyway-unless Dinkins opted to put together a case based on circumstantial evidence, which he did not. Since the ad litem chose not to introduce all the circumstantial evidence that cast doubt on Elspeth (and certain other members of the Hughes family), and since all the documentary evidence-birth, death, marriage, and divorce papers-supported her daughters' position, the jury was left with little choice but to return a verdict in their favor.



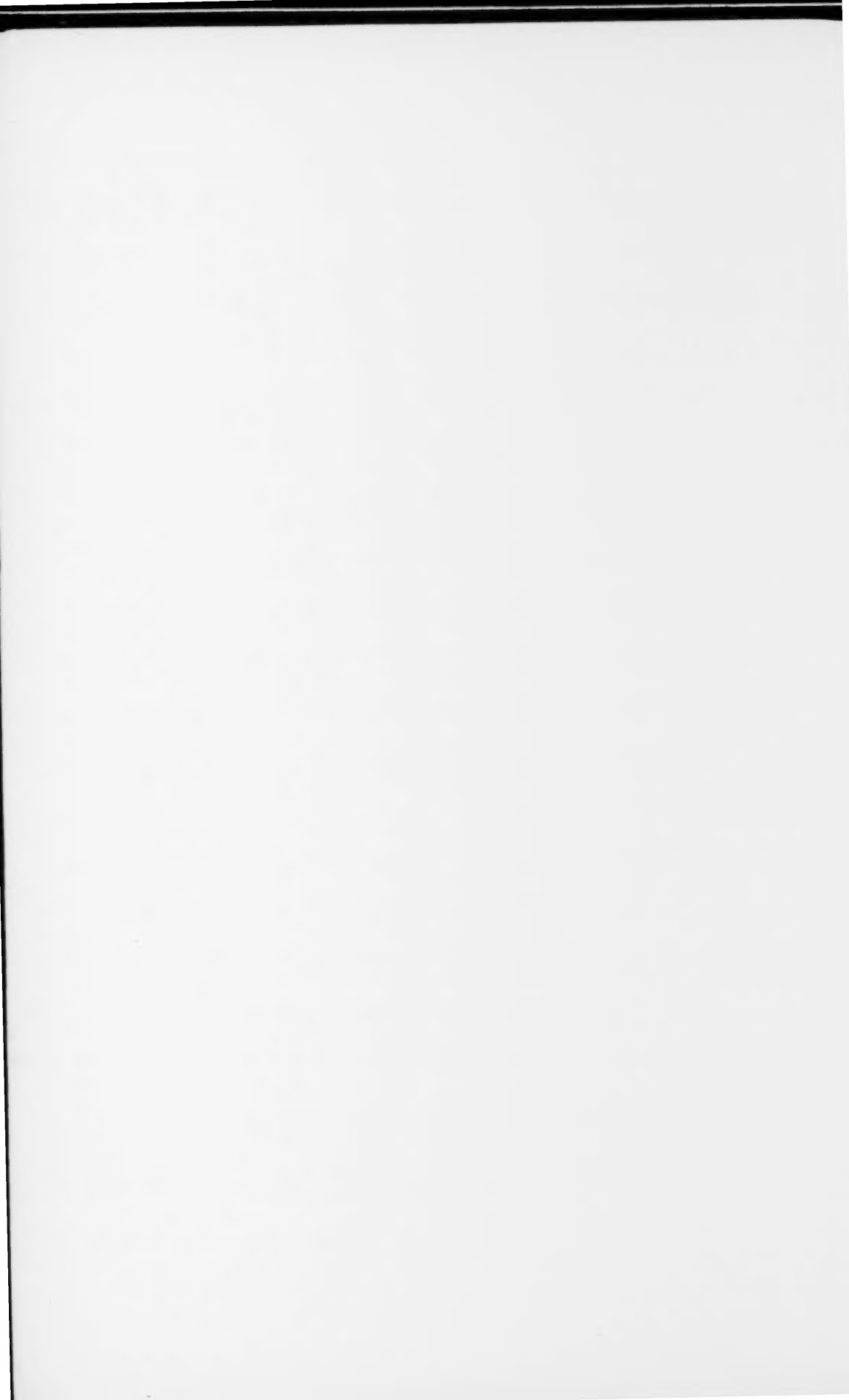
HEIR NOT APPARENT

Still, enough had been unmasked in the investigation to cause genealogist Mary Fay to believe "without a doubt" that there was a flaw in the genealogy that Elspeth's three daughters presented in court that day-
despite the succession of certificates in support of their claim. What Dinkins lacked was, as he put it, the "smoking gun": the missing piece of evidence that would confirm the suspicions that had hung over his office like a dark cloud since 1977.

The Controversy

Just what was the lineage that had sparked this spectacular controversy? It centered on Rupert Hughes, Howard Hughes, Jr.'s uncle and lifelong adversary. Whether or not Rupert Hughes had a daughter named Elspeth was the key to all the dissension.

Just as they had with the maternal side of the family, genealogists turned to the aunts and uncles on



the Hughes side in search for Hughes' heirs in Phase Three. If living, Howard Hughes, Sr.'s, brothers and sisters would be the closest Hughes relatives. If not, their children, Howard, Jr.'s first cousins, would be next in line to inherit the Hughes fortune.

According to the chart prepared by the Philadelphia Inquirer the month after Hughes' death, Howard Hughes, Sr., had two brothers and a sister: Rupert, Felix, and Greta Hughes, respectively. All three-Howard, Jr.'s two uncles and a aunt-were deceased by April 1976, so none would inherit a percentage of his estate. Their children, however, would be first cousins of Hward, Jr., and could inherit in their place. Between the three siblings of Hward Hughes, Sr., it appeared from the Inquirer chart that only Rupert Hughes had any children: a daughter, Elspeth. If the Inquirer chart was accurate and Elspeth Hughes were alive, she would be the closest paternal heir of Howard Hughes, Jr.-a first cousin-and she would be entitled to a dazzling 50 percent of the



Hughes estate under Texas law. Therein lay the controversy. Elspeth Hughes Lapp died in 1945. Her three daughters, however-Barbara Lapp Cameron, Elspeth Lapp DePould, and Agnes Lapp Roberts-would inherit in her place as the direct descendants of Rupert Hughes, Howard, Jr.'s paternal uncle. These three first cousins-once-removed would divide among themselves one-half of Howard Hughes, Jr.'s, estate, according to the laws of the state of Texas. Hughes had never even met two of these ladies, and had no idea who the third (Barbara Cameron) was when they once met by accident at a party in 1945.

It is therefore easy to see why so much attention was focused on Elspeth Hughes Lapp. As the only first cousin on the paternal side of the



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"adopted" stepchildren of Rupert Hughes, characterized each claim as an "abortive, ill-gained attempt to inherit money...crass as it sounds "Freese spoke disparagingly of "those who would bastardize my clients' mother," "casting a shadow of doubt on such a beautiful family relationship." Fisher went even further, scoffing at accusations that discredited what he called "one of the finest families that ever graced America," -But behind all the rhetoric, the doubts and questions still lurked.

The Attorney Ad Litem's Case

What role did the attorney ad litem play in this unprecedented family drama? In his opening statement to the jury, Dinkins explained that he had accumulated an incredible amount of heirship information in his capacity as attorney ad litem, and he informed them that his function was to "insure that the jury be given a fair presentation of the evidence regardless of which

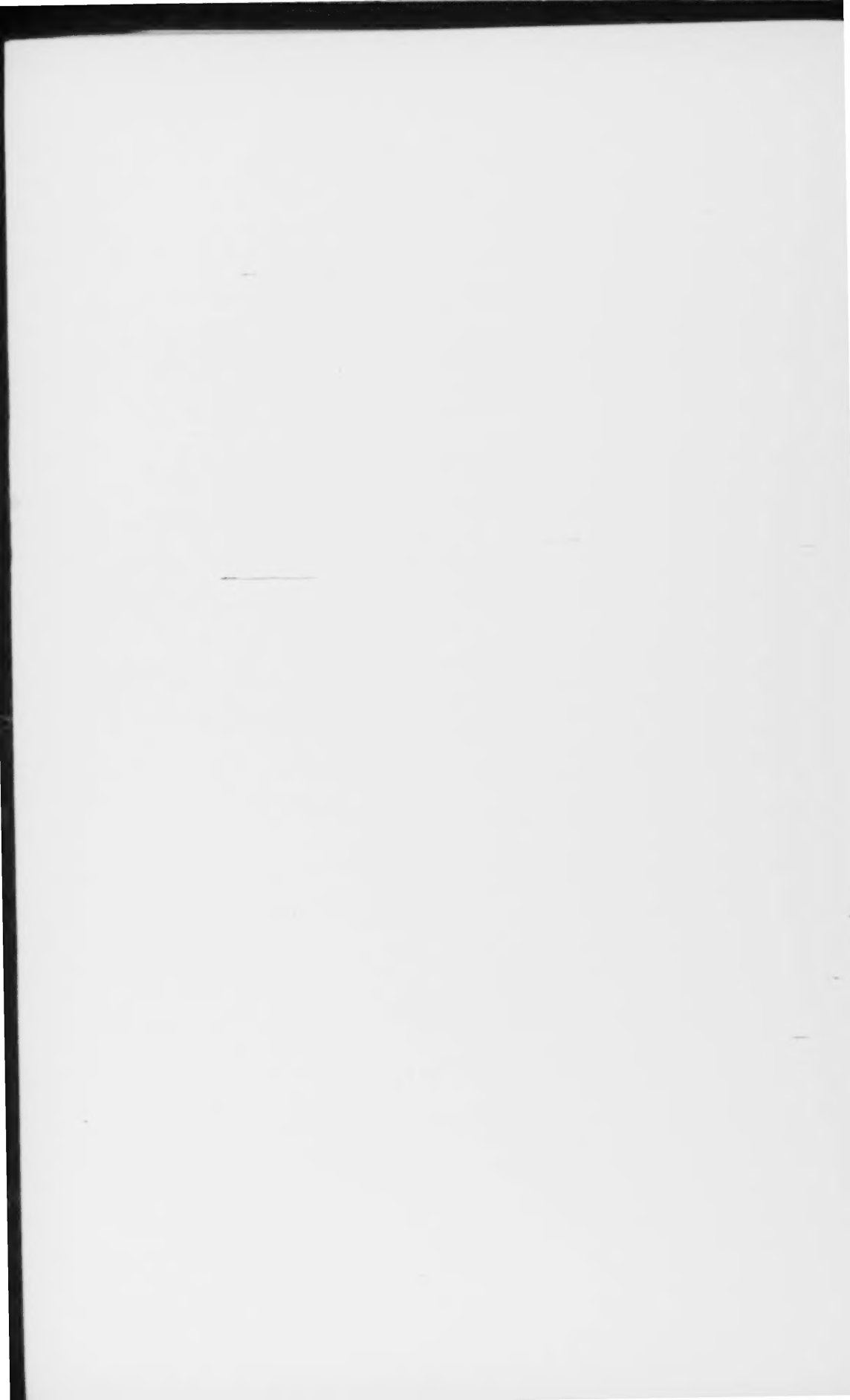


side it affects." His sole objective, he stated, was that they "make an accurate determination of the heirship of Howard R. Hughes, Jr." To see, in other words, that the legitimate paternal relatives-be they Elspeth's children, Rush and Avis, George Parnham's clients, Robert Hughes' family, or an altogether different combination of individuals-assumed their positions of inheritance at the close of the trial.

Toward this end, Dinkins introduced two witnesses, Mrs. Mary Fay, the court-appointed genealogist who had assisted him so faithfully and competently for four unforgettable years, and the associate who had conducted the bulk of his massive investigation. Yet it was a curiously anti climactic presentation. Mrs. Fay was called as an expert witness merely to introduce into evidence the series of vital statistics relative to the genealogy of the Felix Hughes family (Howard, Jr.'s, grandfather). One by one she received, without explanation, the known births, deaths, marriages, and divorces of Judge Hughes, his wife Jean Summerlin Hughes, and

their children Greta, Howard, Sr., Rupert, and Felix, as reflected on the certificates and decrees that Dinkins quickly handed her. The testimony of Dinkins' associate, his only other witness, was restricted to a few arbitrary questions and answers, most of which concerned matters brought up earlier in the trial by Robert Hughes, and which served to discredit parts of his testimony.

Neither Mrs. Fay nor Dinkins' associate was asked to offer an opinion about the Hughes family tree, and little of the puzzling information they had gathered was offered into evidence. The many individuals they had interviewed during the prolonged discovery period were never called as witnesses, and the questions they entertained were never aired-all of which gave the jury the impression that Dinkins' investigation had every confidence in the genealogy endorsed by Freese and Fisher's clients. They had no way of knowing that Dinkins' researchers found the events in the Hughes family as strange and unexplained as Ollie Blan once



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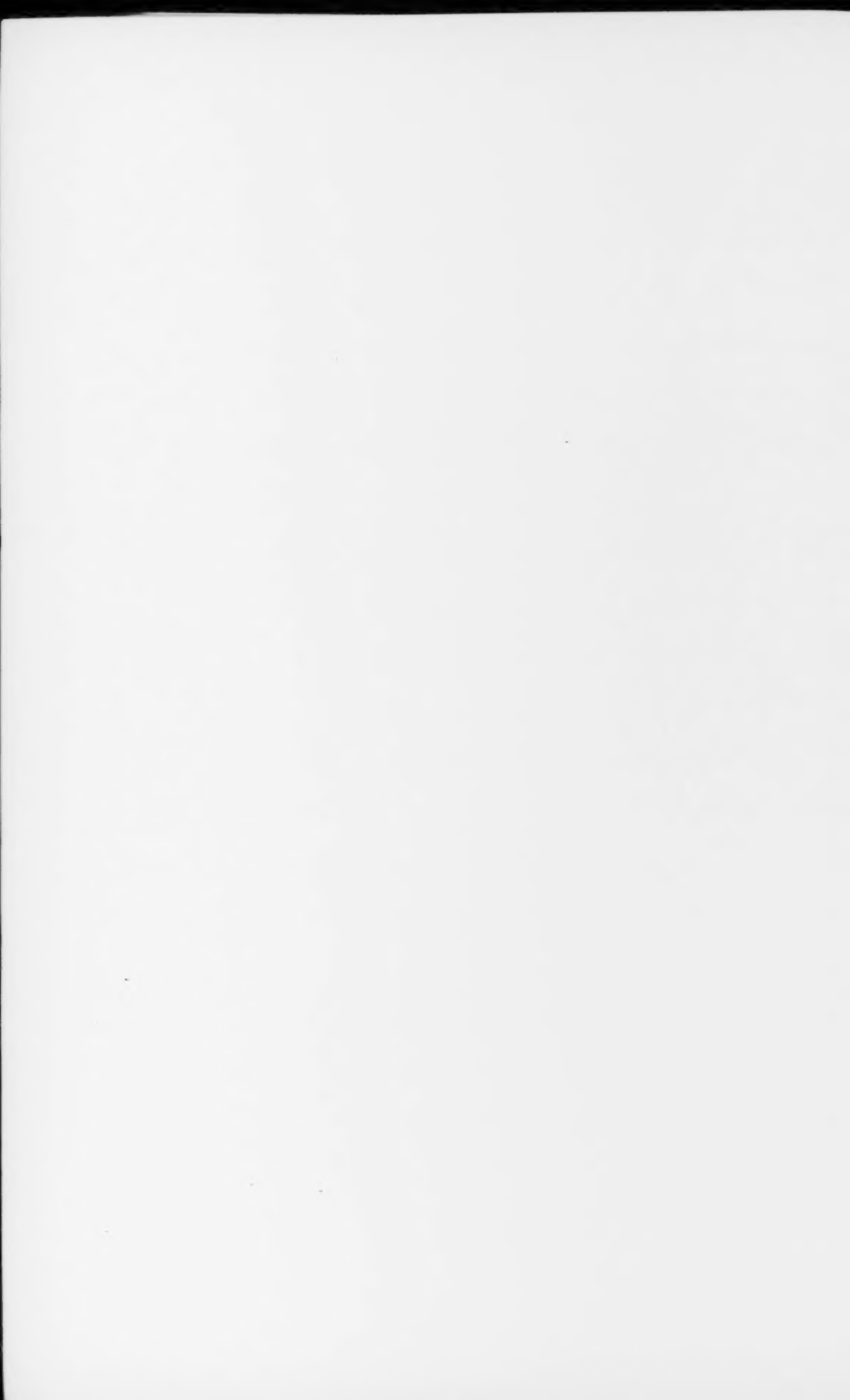
described them.

So, in less than a day, Dinkins rested his case. In his closing statement, he again emphasized that he was impartial in the dispute, and asked the jury "simply to weigh the evidence" before returning a verdict. The irony, of course, is that the jury saw very little of the evidence Dinkins' staff had collected. Since by far the greater part of the data in his files was not documentary in nature, it was not generally admissible in court. How, then, could the jury possibly be expected to "weigh" the evidence? And was the string of certificates and licenses, introduced more or less at random, without much explanation and with no attempt to tie them all together, in fact a "fair presentation of the evidence"?

Some privately thought otherwise. As the attorney ad litem, Dinkins was by definition a truth and fact finder for the court in the matter of Howard Hughes'

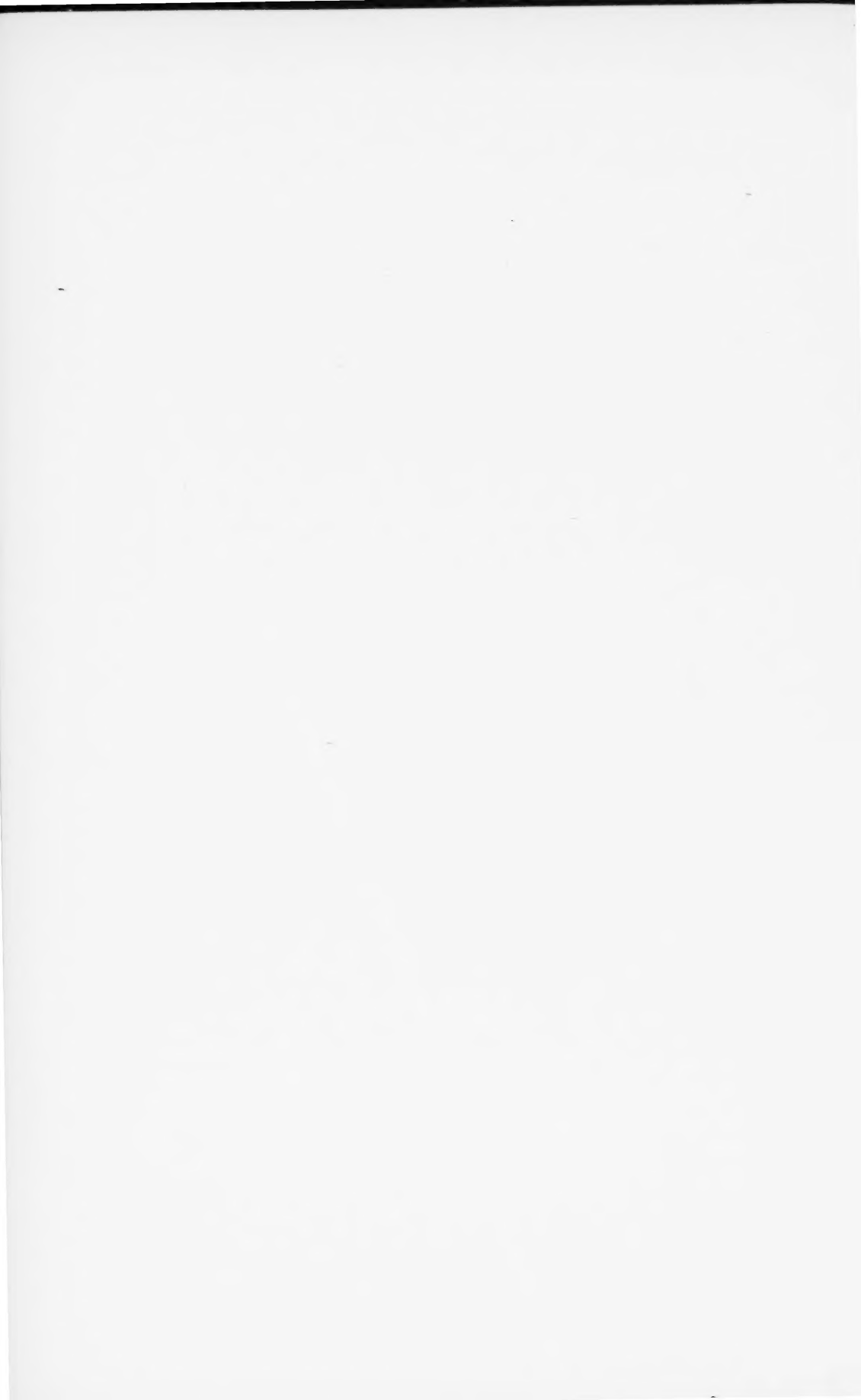
heirship. The dissenters believed that because of the unique and impartial nature of his role in the proceedings, any and all information Dinkins-collected pertaining to heirship matters should have been open to all interested parties before the trial began, to use in the formulation of their cases. Since Dinkins had gathered this evidence in the pursuit of truth, "regardless of which side it affected," such a posture would have been in keeping with the spirit of the ad litem's role, they reasoned.

Dinkins only partially agreed. Though he opened his files to all parties for several months prior to the trial, he decided to display only the "public" documents. The "nonpublic" documents-interviews, internal memos, etc.-remained closed to scrutiny. Without the benefit of this additional information, and without explanation from the individuals who had conducted his research, the materials in Dinkins' files lost much of their value. It was a highly complex case, and only



those who had been studying and analyzing the different branches of the Hughes family tree could hope to make any sense out of it. But Dinkings considered the non-public information to be privileged, so it remained under lock and key in the offices of Butler, Binion, Rice, Cook & Knapp.

This point of debate was particularly critical in the Hughes case. Since Dinkins' fees and expenses were paid out of Hughes' prodigious estate, he had abundant funds to pursue his independent heirship investigation. The Hughes relations from Missouri and Alabama who questioned Elspeth's parentage were not so fortunate. They were mostly individuals of modest means who had little time or resources to pursue their claims. This was complicated by the fact that the attorneys for the mid-western relatives who believed Rupert Hughes to be sterile, George Parnham and Jacqueline Taylor, were seriously outclassed by Wayne Fisher and Paul Freese. Elspeth's daughters and Rush and Avis were represented by shrewd



and experienced attorneys from powerful and well-connected law firms in Los Angeles, Houston, and Florida.

Panham and Taylor were further handicapped by the fact that they were hired only a few months before the heirship trial, which gave them insufficient time to conduct their investigation. Consequently, they were annoyed at being denied access to Dinkins' many boxes of "privileged" heirship files, which might have contained information beneficial to their clients.

Elspeth's adversaries were similarly frustrated by Dinkins' decision to offer only documentary evidence in his presentation to the jury. It was Dinkins' opinion that there was no hard evidence with which to refute Elspeth's position of inheritance, and he chose not to put together a case based on circumstantial evidence. These decisions, which arguably served to strengthen Freese's and Fisher's case while diluting the claims of Parnham's and Blan's clients, were nonetheless based on an adequate legal foundation. The function of an



attorney ad litem is not clearly defined in the law, and Dinkins had little precedent to guide him in his responsibilities. Though his critics might argue with some authority that, as an officer of the court, Dinkins should have provided unlimited access to his files, or attempted to admit into evidence anything with possible relevance and allow the jury to decide its significance, the fact is that is that he was under no legal obligation to do so. These were judgment calls on his part. Thus by a combination of the law restricting admissibility of evidence and Dinkins' interpretation of his role as ad litem, the unsettling rumors, innuendoes, and inconsistent facts tht Dinkins' investigation had dug up went undiscovered, unrepeated, and unreported. Ironically, in a legal proceeding designed to arrive at the truth, it was a rule of law-that prohibited material that may have assisted in making that determination.

With the scales thus tipped in their favor it was an easy victory for Paul Freese's clients. Though they



ruled that Elspeth was the daughter of Rupert Hughes, there is little doubt that the jury entertained certain suspicions about Rupert Hughes and his alleged progeny-not to mention the Hughes family in general-after hearing the evidence brought forward by all sides. Even based on the minimal and poorly organized information to which the jury was exposed, it must have been clear to them that there was something about the family history that, in the words of those close to the case, "just didn't hang together." The family understanding in and around Keokuk that Rupert Hughes had no children, that he was in fact sterile; the unusual nature of Rupert's relationship with Elspeth and, to a lesser degree, her daughters, the missing period in Elspeth's life, the contradictory nature of Avis McIntyre's testimony in general, and particularly concerning Elspeth's age; the dual nature of Elspeth's identity, the confusion over her year of birth, and the bizarre tale by Robert C. Hughes. Was Robert Hughes mentally unbalanced, as

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Fisher and Freese wanted the jury to believe, or was there something to his family's surveillance of Felix Hughes and his children? This parade of witnesses made one wonder whether Rupert Hughes and his daughter Elspeth's family indeed shared what Paul Freese had described as "such a beautiful family relationship." Was it really, as he characterized it, a "simple family story"? To Dinkins' colleagues, it was anything but simple.

And so Ted Dinkins' associate and genealogist sat in silent frustration as the jury deliberated, waiting for the verdict whose outcome was certain-knowing that the strange disclosures during this anticlimatic trial were just the tip of the iceberg as far as the Hughes family was concerned-and powerless to do anything about it. Perhaps the information they had puzzled over and tried so fervently to make sense of for five years did not make their grave doubts about the paternal heirs



any less real, or any less disturbing. They had been assigned the task of insuring that the rightful heirs-at-law of Howard Hughes, Jr., inherited his estate, and it was a responsibility they had come to take very seriously. As the verdict was announced, setting into motion the mechanism of inheritance rights to the Hughes fortune for Barbara Cameron, et al., they could not shake their belief, based both on instinct and fact, that the wrong people may have inherited the estate of Howard Hughes, Jr.

Rush and Avis: An Ironic Postscript

As a postlude to the trial, one issue of great importance remained to be resolved: the adoption by estoppel claim of Rush Hughes and Avis McIntyre.

"Adoption by estoppel" is a little known legal doctrine by which an individual who was not formally adopted by a stepparent may be recognized as "equitably" adopted (with the same rights and privileges as a natural or



formally adopted child), if treated and regarded by the parent in question as his or her own child, and not as a stepchild. The process is often compared to a common-law marriage, and the concept is much the same. The equitable adoption theory is not recognized by every state, and it is applied discriminately in those states that do recognize it-hence its low profile both in and out of the legal profession.

Rush and Avis' attorney, Wayne Fisher, was quick to call his opponents' claims a "cok n' bull story" in court that autumn of 1981. What, then, of his own clients' less than airtight case? Insiders questioned whether Rupert Hughes actually considered the two stepchildren to be his adopted son and daughter, and privately speculated that the two could not overcome the falws in their case and prove otherwise in court. Yet, judging by Wayne Fisher's bravura performance during the trial to determine Elspeth's legitimacy, one would never suspect there was a cloud over his own clients' claim of heirship. In his final argument to the jury,

Family Fued

he announced that it was "with great honor" that he represented Rush and Avis, and supported the "three granddaughters of Rupert Hughes."

As it developed, Fisher's confidence was not misplaced. To the supreme bewilderment of the attorneys representing the midwestern and Alabama branches of the Hughes family who had struggled to hard to unseat Elspeth and demonstrate their own clients' kinship to Hughes, the claims of heirship of Rush and Avis were never even litigated. At several points in Phase Three of the heirship trials, George Parnham tried to introduce a motion to try the adoption by estoppel issue, but it was repeatedly denied. Judge Gregory explained his ruling by stating that the adoption issue was dependent on the outcome of the trial to determine Elspeth's legitimacy. If Barbara Cameron and her sisters were unsuccessful in their efforts to prove that Elspeth Hughes was the daughter of Rupert Hughes, Gregory stated,



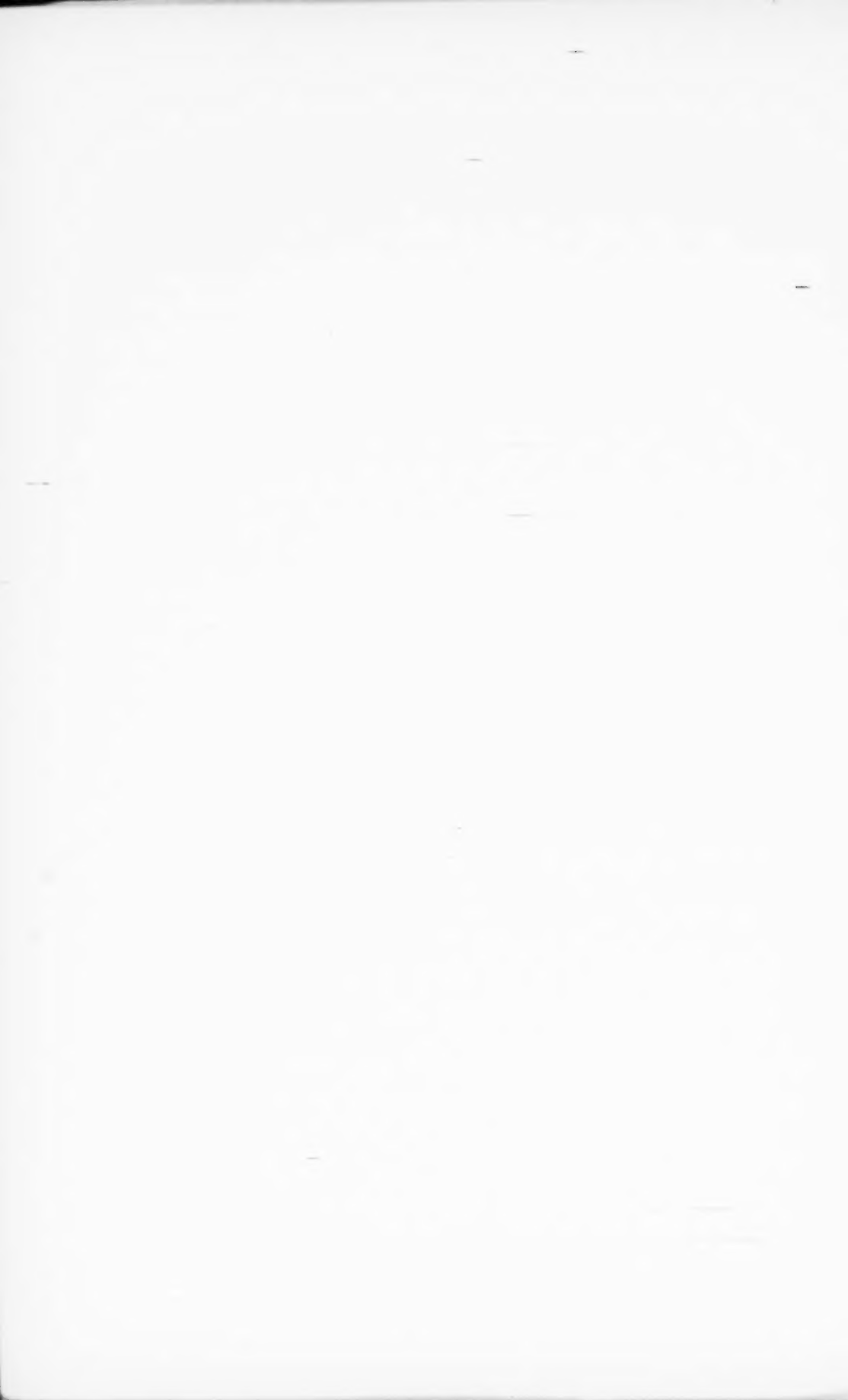
there would be no need to consider the adoption claim. This position was based on a complicated point of law. Judge Gregory believed that if it were shown that Rupert Hughes had no children of his own, then Rush and Avis would not have the option to prove that they were adopted by estoppel. He as following a line of cases that hold that, for an individual to be adopted "by estoppel", the adoptive parent must also have a natural-born child to estop. If there is no natural-born child, this line of reasoning continues, a stepchild cannot claim to be equitably adopted; the legal argument of estoppel would not apply. If Judge Gregory's analysis of the law is correct, it meant that, for their heirship claims to have a chance, Avis and Rush first needed to have Elspeth established as the natural daughter of Rupert Hughes-as much as Elspeth's daughters needed Avis' testimony on their behalf, some pointed out cynically. As a consequence, attorneys for some of the other claimants were heard to mutter about how the law creates strange



bedfellows, pointing to Avis' turnabout endorsement of Elspeth and the daughters' support of Avis as a greed-motivated example of "you scratch my back, I'll scratch yours."

Once the jury returned its verdict legitimizing Elspeth on September 4, 1981, George Parnham again asked to try the adoption issue. And again, Judge Gregory denied his request. Instead, he set a hearing for September 16, 1981, at which time he would consider the claims of Rush and Avis Hughes, which he and Dinkins deemed to be "derivative" of the now-successful claim of Barbara Cameron, et al.

At the September 16 hearing, Judge Gregory ruled that only attorneys for Rush and Avis, the Barbara Cameron group, and ad litem Dinkins had "standing" to participate, blocking George Parnham and Jackie Taylor's attempts to introduce evidence in opposition to Rush and Avis' adoption claim. Wayne Fisher presented several hours' worth of evidence on behalf of his clients, consisting of portions of their depositions



HEIR NOT APPARENT

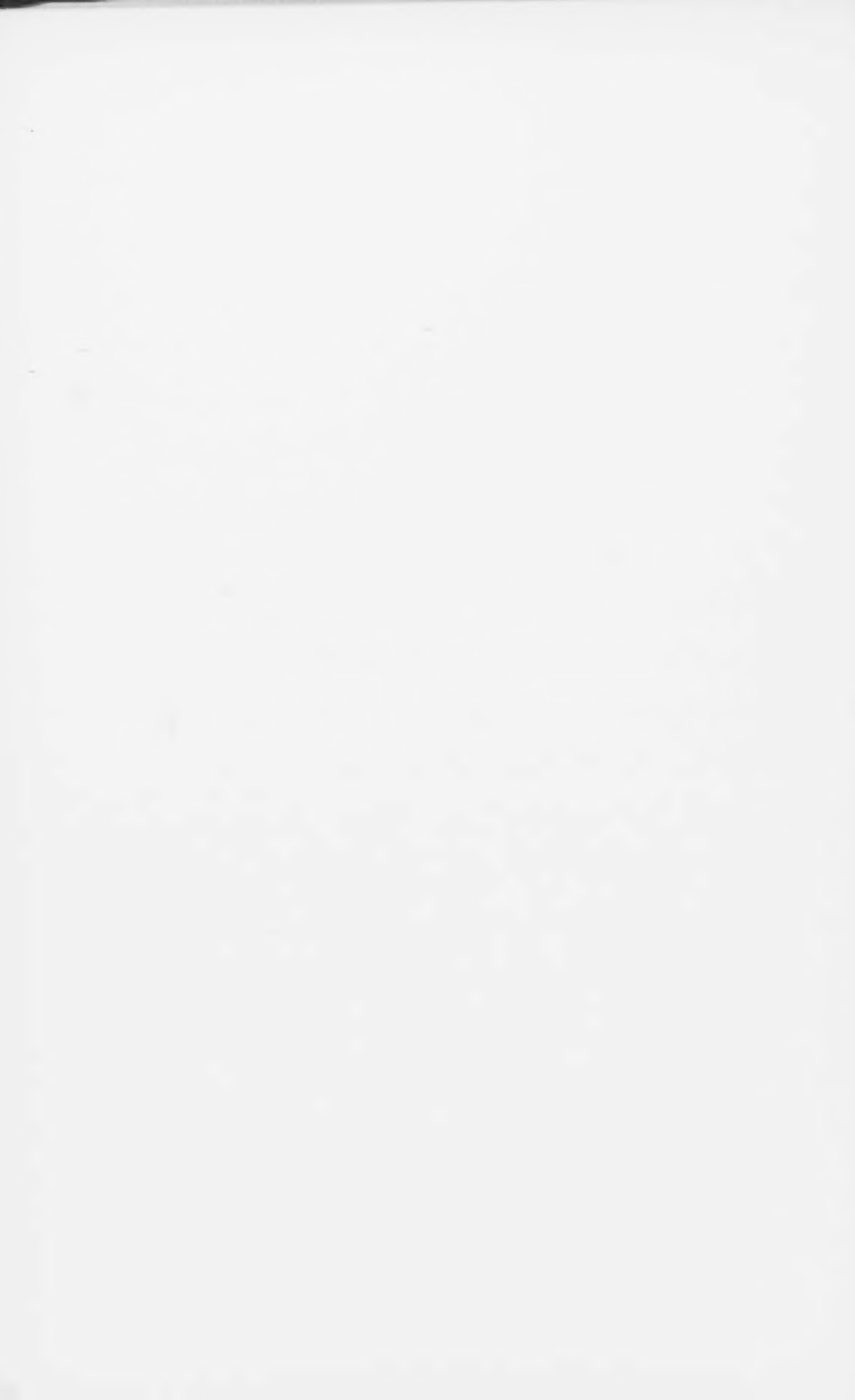
and several of their school records. Paul Freese then took over and said that he, speaking for Barbara Cameron and her sisters, had "no objection" to the claim that Rush and Avis were the adopted children of Rupert Hughes. In fact, he "strongly encouraged" the court to grant it, predicated upon the pretrial settlement agreement he and his clients had entered into with Rush, Avis, and the maternal heirs. Ted Dinkins, who had an obligation to protect the interest of the unknown heirs of the Hughes estate, announced that he was "not prepared to try Rush and Avis at this point," and asked the court whether he had an obligation to do so.

Apparently not, Judge Gregory, in what he described afterwards as a "formality", declared that Rush and Avis were the adopted children of Rupert Hughes, "based on the evidence and the agreement of the parties." The fallacy in that statement is that there was no one present to offer any evidence or testimony to the con-



trary, with the possible exception of ad litem Dinkins,
who was instructed by the court that he was under no
obligation to try the adoption by estoppel claim. Judge
Gregory was then asked to approve the settlement agree-
ment, in line with a final judgment that would be pre-
pared by Dinkins, to distribute the Hughs estate in
accordance with the "heirs" earlier percentage agreement.
The judge similarly approved the private agreement.

So it came to be that Rush Hughes and Avis McIntyre,
born Rush and Avis Bissell, never adopted by their
mother's second husband, Rupert Hughes, and unacknow-
ledged in Rupert's own will, became legally entitled to
9.5 percent of the multimillion-dollar estate of Rupert's
nephew, Howard Hughes, Jr., who demonstrated a well
known and undisguised contempt for Rupert. It was a
legal coup of unsurpassed audacity. Attorneys for the
midwestern second and third cousins were up in arms
over this latest development, frustrated in the extreme
over their inability even to litigate Rush and Avis'



claim. Those close to the estate saw nothing improper or unusual in this final twist to the heirship proceedings. "It's done all the time," said one probate attorney of the approved settlement agreement cutting in Rush, Avis, and the others. "An agreement to divide an estate," he maintained, such as the one entered into by the maternal and supposed paternal heirs of Howard Hughes, Jr., "is only improper if it affects anyone's interests other than those included in the agreement." And since the maternal heirs and the Barbara Cameron group had already been determined to be the bona fide Hughes heirs by judicial process, then according to this interpretation of the law, they were free to cut in anyone they chose, since the only interests they were diminishing in doing so would be their own.

How about the unknown heirs? Since it was at least possible, some would say probable, that Rush and Avis did not meet the legal standards of equitable adoption, didn't the attorney ad litem have an obligation on behalf of any existing unknown heirs at least to



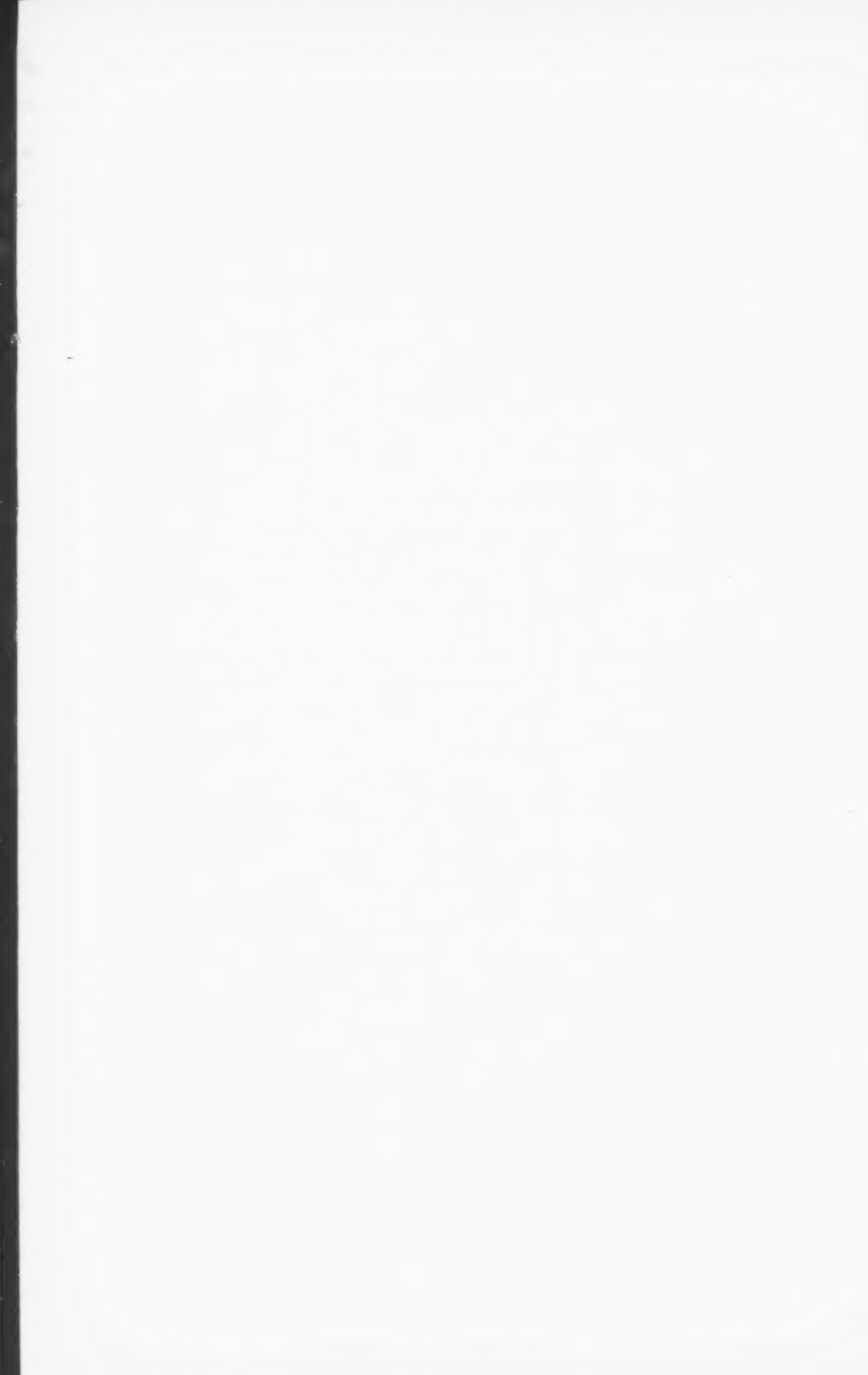
litigate both sides of the adoption issue? Those with the opposite view felt the "unknown heirs" had no interest in the matter because the 9.5 percent was money being paid "privately" to Rush and Avis by the court-determined heirs-at-law.

Isn't there still a hole in this argument? Does not Hughes' estate itself have an "interest" to see that only the rightful heirs share in the Hughes fortune? Insiders admitted that this was correct. With that in mind, one must wonder whether it would have been proper to let a judge or jury decide the factual question as to whether Rush and Avis were in fact equitably adopted by Rupert Hughes, based on all the evidence, not merely on unopposed testimony.

With the ever-shifting legal positions in counterpoint to the strange and conflicting facts that came to the surface about the Hughes family, it is easy to see why the third phase of the trial to determine the heirs-at-law of Howard R. Hughes, Jr., inspired such a torrent



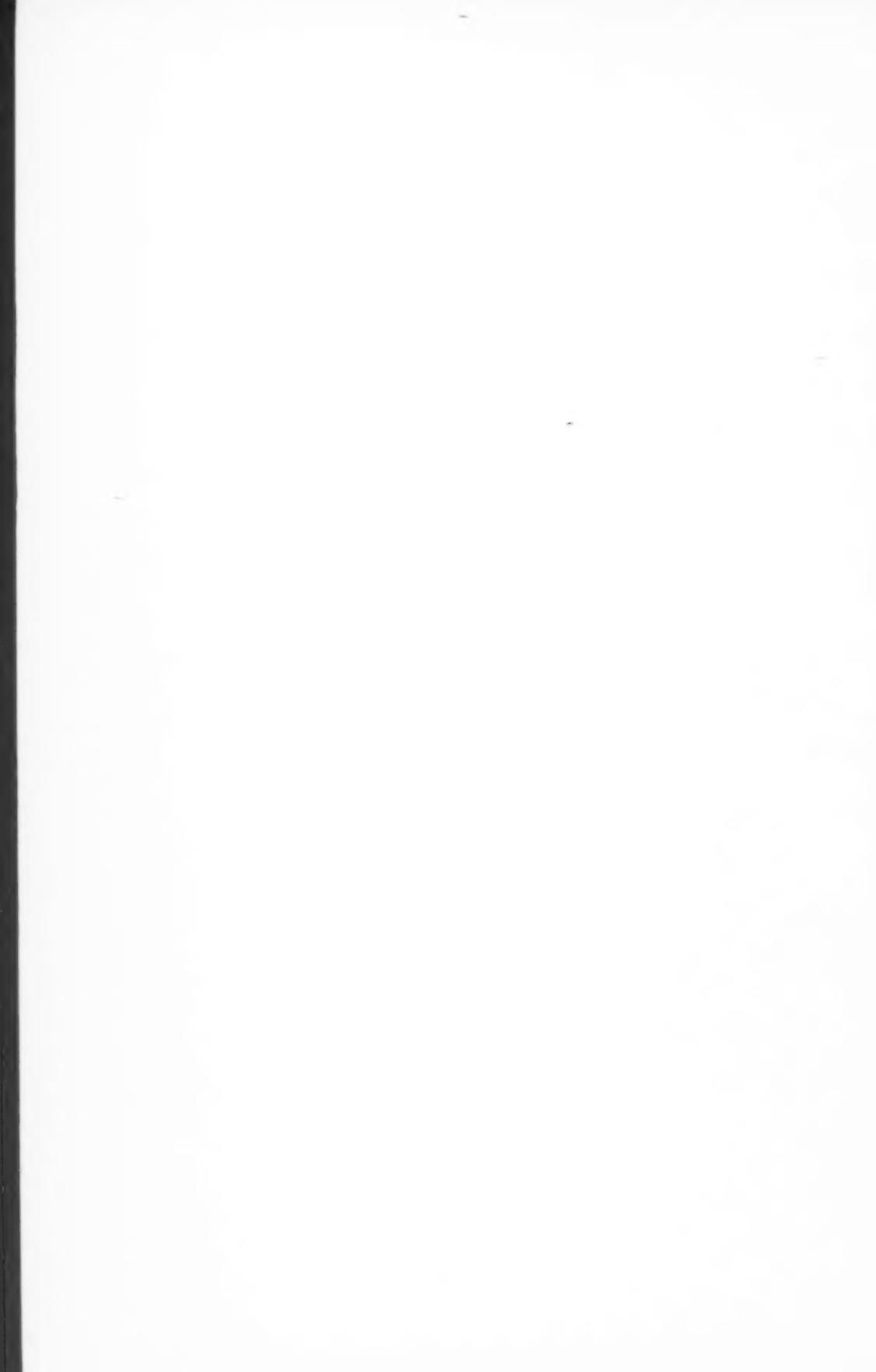
of controversy. Yet, as Dinkins' investigators knew, there was much more to the Hughes family tree than ever came out at the much-ballyhooed trial. The most disturbing and intriguing facts and circumstances never even made it to court. They remained hidden from view, locked in file drawers for safekeeping, or dancing in the heads of Dinkins' proteges.



Rupert Hughes: A Man of Many Faces

Agnes went to Europe, and stayed six months. (Hughes accused Agnes of self-inducing five abortions altogether.) Of additional interest was Hughes' further statement that Elspeth was once sent to Syracuse as a child, where she caught whooping cough, had no medical treatment "and was on the point of death."

Based on these affidavits, the justice handling the case issued an order in August 1902 (modified slightly in November 1902) that provided for temporary alimony for Agnes and that placed Elspeth in the temporary custody of Ruper Hughes. The judge further appointed a "referee" (a local New York attorney) to hear testimony on the fitness of both parents. After the reference hearing, the appointed referee was instructed to issue an opinion regarding the ultimate custody of Elspeth. Oddly, there are no papers in the file referring to the reference hearing, nor is the referee's report on record.



Nine months later (from October to November 1903), the celebrated separation trial occurred in New York City. It was here that Rupert Hughes outlined the specific instances of adultery he alleged that Agnes had committed during their marriage. According to the pleadings Hughes filed, these affairs began in 1896, as follows:

1. James C. Beebe: Keokuk and Iowa City, April-June 1896. (This is when Rupert Hughes was in Europe, according to the Keokuk papers.)
2. Max Karger: all of 1896 in New York.
3. William H. REynolds: 1899 and parts of 1902; New York.
4. Henry R. Lemly; March 1898 in Virginia and September 1900 in London.
5. Crowell Campbell; 1902, New York.
6. Robert J. Grant: August 1901, France, and November 1901, Syracuse.
7. Arthur Conover: Summer of 1902, New York and New

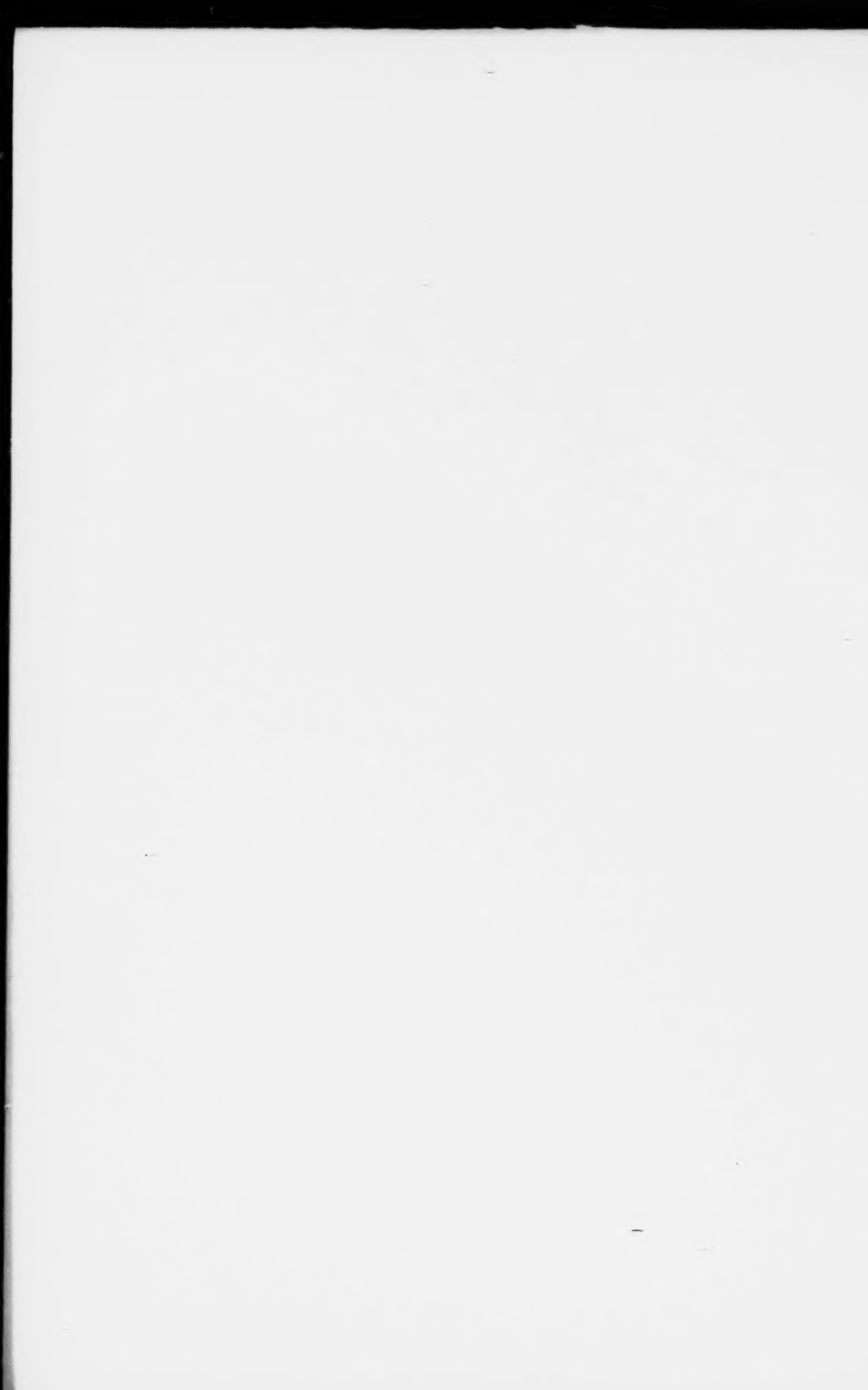


Jersey.

8. J. Marmaduke Robinson: (Tashleene's fourth husband)
1902.

It was at the conclusion of this trial that Rupert and Agnes reached an out-of-court settlement that culminated in the separation decree of November 1903, granting Rupert Hughes primary (nine-month) custody of Elspeth.

The next development in the dissolution of the Hughes marriage was strange indeed. On January 29, 1904, roughly two months after their separation decree was filed, Agnes Hughes filed for divorce (a separate proceeding from her original cause of action, which was for legal separation only). In her complaint, she charged Rupert Hughes with adultery. In contrast to the separation proceedings in Manhattan, the.....



December 9, 1981

A FEW MINUTES WITH VIDA ROONEY

BARRY HASSLER

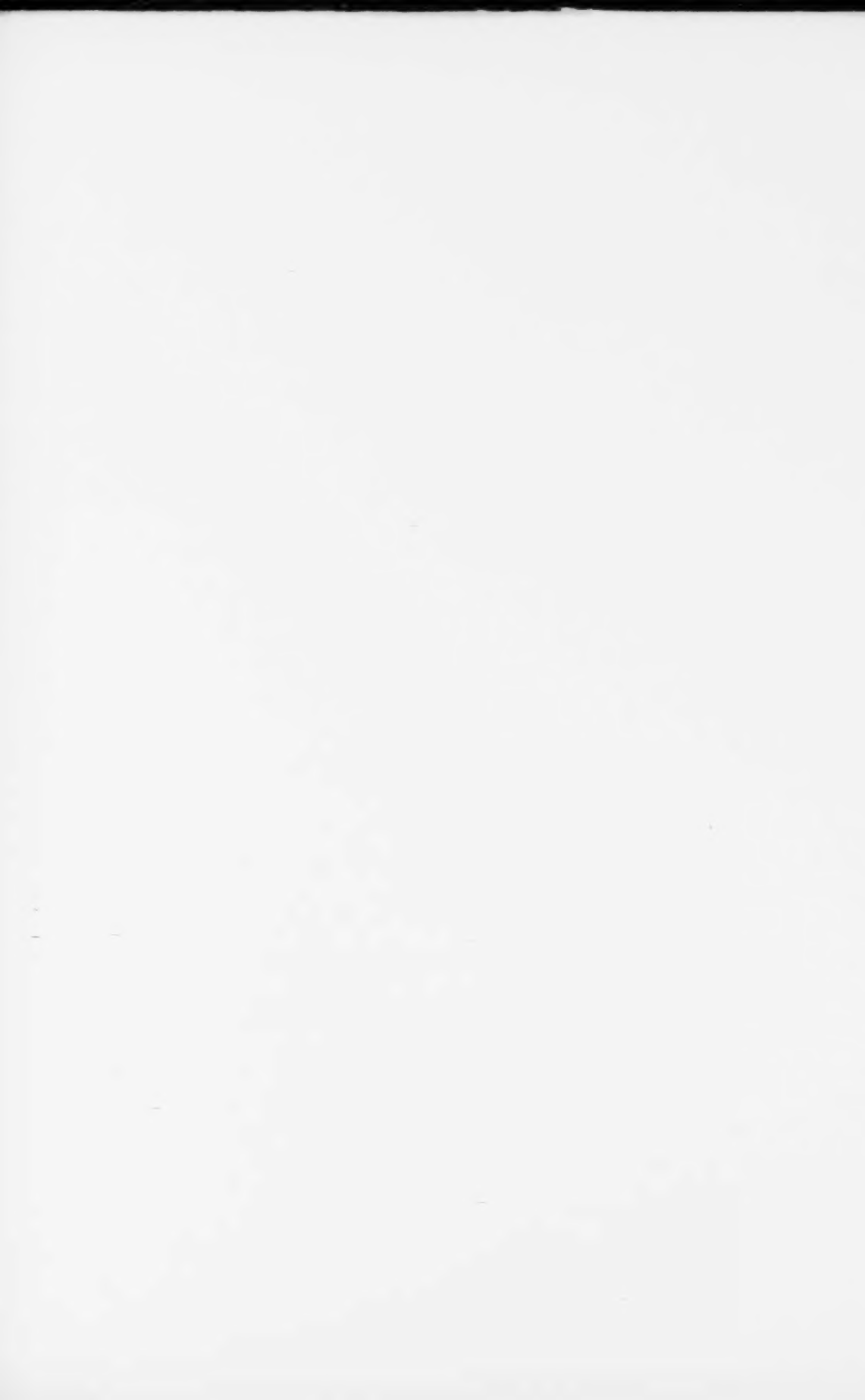
CLAUDE' CLAUDE' CLAUDE MEET THE TROUBLE: - Produced by

UNDERMOTED - Produced by MARTY CAROLIS BARNER

JUSTICE FOR GATES - Produced by George Cliffe



cal scientist, puts it more directly: "Don contribute
sake." Anthony Chabadian, a University of Texas political-
Frank Tejeda, "is that perhaps justice in Texas is for
campaign gifts. "The appearance," says state senator
chosen in partisan elections. It also has no limits on
one of only nine states where virtually all judges are
bench-politicking tactics are not illegal, since Texas is
corpus Christi firm gave \$120,000 more. Such costly
\$40,000 to members of the high bench, and his former
chief appellate lawyer in Texas, he has donated some
tions to the justices. As for Russell McMain, Texaco's
ious counsel, doled out \$248,000 in campaign contribu-
attorney Joseph Lamm and his firm, Pennzoil's victor-
wer not approaching strangers. Since 1980 Houston
dollar battle turned to the Texas Supreme Court, they
When lawyers in the Pennzoil-Texaco multi-million-
The state's top judge resigns to fight for reform



become outrageous." He favors a merit-selection system
believes that the "acceleration of campaign financing has
been elected to the bench in 1984. But he came to re-
do into private practice, spent more than \$1 million to

HILL, 64, a former state attorney general who will
to lead a drive to abolish the elective process.
will take the extraordinary step of ducking the bench
into place in 1973. This week Chief Justice John Hill
first serious reform effort since the system settled
to judges at all levels, is sparking what could be the
along with the duckening torrent of lawyer donations
\$2300,000 to the jurists in 1986 alone. Now that case
Pennzoil's 53 Texas attorneys they judged out more than
ished estimates of the greater electoral largesse of
\$3 billion local court watcher were reminded of bur-
ment and Texaco decided last month to settle by paying
Justices declined to upset the pro-Pennzoil trial judge-

It can certainly look unseemly. After the Texas
won."

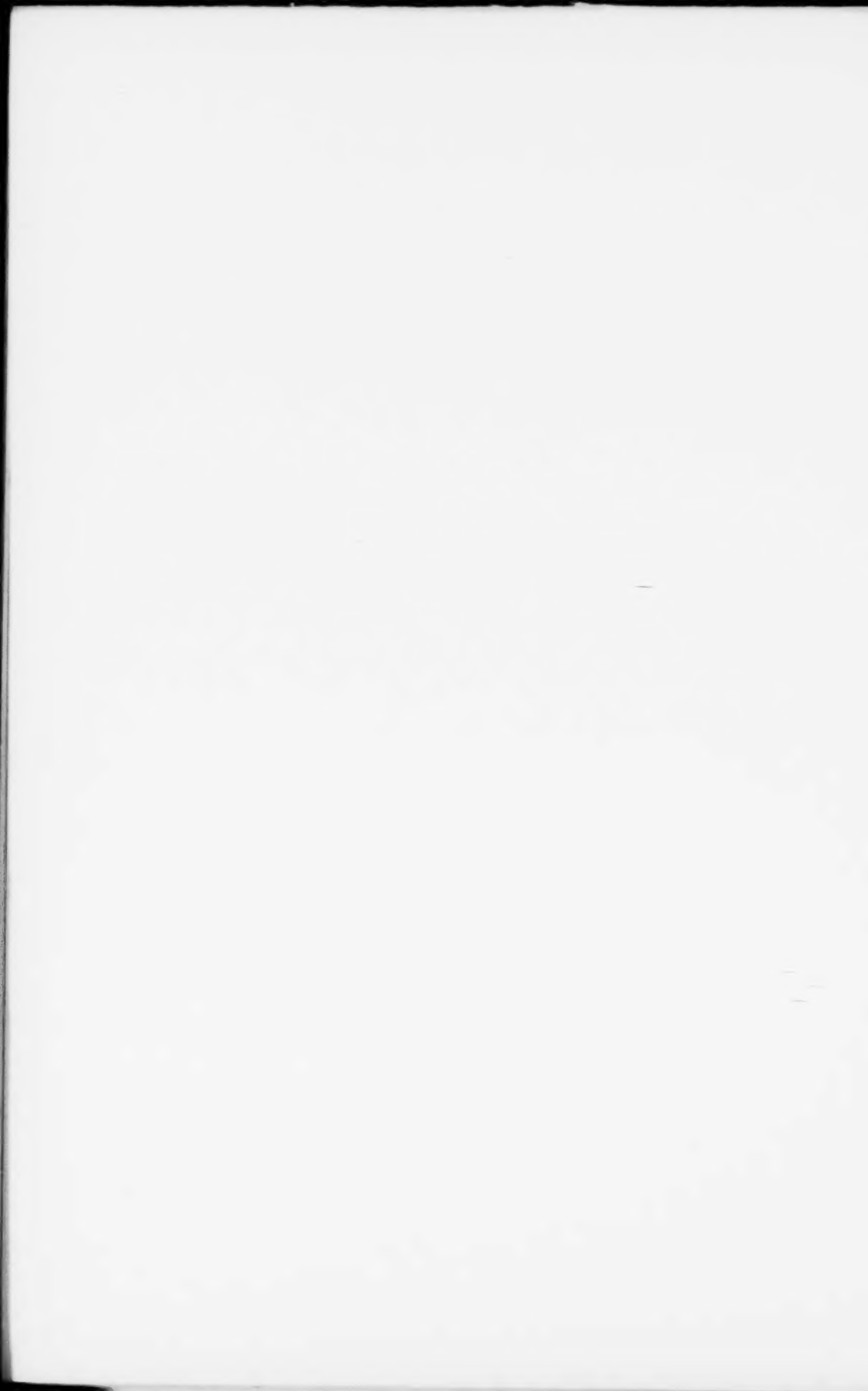
to your friends and hope your friends will take care of



from one appellate court to another, which would have other courts, attempting to get a pair of cases moved sitting justices. C. L. Ray was reprimanded for, among conduct handed down unprecedented reproaches to two to donors. Last June the Texas Commission on Judicial

Statistics contend that judges sometimes get too close philosophy.

try to give back something that promotes the plaintiff's "What kind of an ass would I be," he says, "if I didn't the state's kind of torts, half concedes the point. less judgments," and scares businesses away. Lamenting "pro-plaintiff tilt" that encouraged "virtually impartially ejected justices-all democrats-have developed a few," he says. Clements charges that the court's bobble-court. "Texans have lost faith in their judicial representative system, though only for the nine-member mid-republican governor William Clements is also pushing an justices are later voted up or down by the citizenry. selects judges from names submitted by a commission, the used in a number of states, under which the governor



dissolving round of spending. The newly appointed interim
a solid foothold on the supreme court, and that means a
def better. This year Republicans are busying to gain

In Texas things may get still worse before they
land, an authority on campaign spending.

costlier," notes Georgetown law professor, Roy Schor-

"Judicial campaigns are getting noisier, nastier and
spent to put judges on the bench and keep them there.

merit selection has scarcely contained the efforts

just shifted where the politics are." In some states

is who gets to do it. If it's the governor, you've

notes lawyer McManis: "The problem with appointments

appointments or elections," says Justice Franklin Spear.

certain amount of obnoxious politicking with either

appointive systems are no cure-all. "There's a
had cases before the court.

an expense-paid Las Vegas weekend from an attorney who

"admonishment" because two of his law clerks accepted

his campaign. Justice William Kennedy drew a lesser

helped a San Antonio lawyer who had donated \$50,000 to

(Taken from...) TIME, JANUARY 11, 1988

-By Richard Woodbury/Justin

and the legal precedents.

That knowing such numbers may count for as much as know-
these days," Robertson asks. "211,000." The reply is
same. Do you know what 30 seconds in prime time costs
seek out contributions, but money is the name of the
to raise the same amount. "It's not a pleasant task to
static opponent, sitting Justice Ted Robertson, intends
but he still plans to raise \$1.2 million. His demo-
like to ask individual contributions to his campaign.
Chief Justice, Republican Thomas Phillips, says he would



this one, is whether money, campaign cash, does in fact
a question frequently raised in Texas political ads like

MATTACE[voice-over]: The central question in all this,
about it anymore.

misconduct, has succeeded so well that nobody will talk
talking-to keep from telling what they know about their
that-that their tactics to intimidate people from

JEFF ARMSTRONG: It bothers me, and it makes me angry
personally.

not only Jeff Armstrong was still willing to speak out
told us about the conflicts of interest they had seen,

MATTACE[voice-over]: A number of former law clerks
doing to adversely affect me."

I've got cases pending. If I don't contribute, it's
defeat this, I want to complain. What am I to do?
Judicial conduct, saying, "Look, I despise this, I
affairs, wrote to me, wrote to the Commission on
called me, as chairman of the Committee on Judicial
before the Supreme Court. Many of those attorneys



and the question.

Judge ROBE: About as long as you and I have been asking
Robe;

MUTTACE: How long did it take him to reconsider, Judge
and he did vote five to four.

Judge ROBE: When that happened, he then reconsidered,
want of one vote, Mr. Mandes was about to lose.

And when the then-Chief Justice announced that, for
said he would not vote on the case, but he changed his
a major case before the court. Initially, Robertson
over \$150,000 in contributions at a time when Mandes had
over \$1,000,000 in contributions. Mandes, who has given the Judge
led Judge Robertson, a main campaign contributor, Texas

MUTTACE[voice-over]: The case before the court invol-

LA ANNOUNCER: Led Robertson, a Judge to be brought off
the Texas Supreme Court.

Judge who is today running to become Chief Justice of
influence Judges, robes. Consider just one vote of the



contributed \$150,000 to his campaign.

Based on his one vote, he had sided with the man who had
managed to ask him why, when the court's decision had
handed. Because he declined to talk to us, we were

one, Robertson voted with seven other Justices against
under review and his vote was no longer the decisive

MATTACE [voice-over]: A year later, when the case came
before the court, that quickly.

would have found out. I don't think somebody's con-
science in that room that day, that's exactly what you

MR. ARNSTEIN: I think if you'd taken a poll of the
room instead of his conviction.

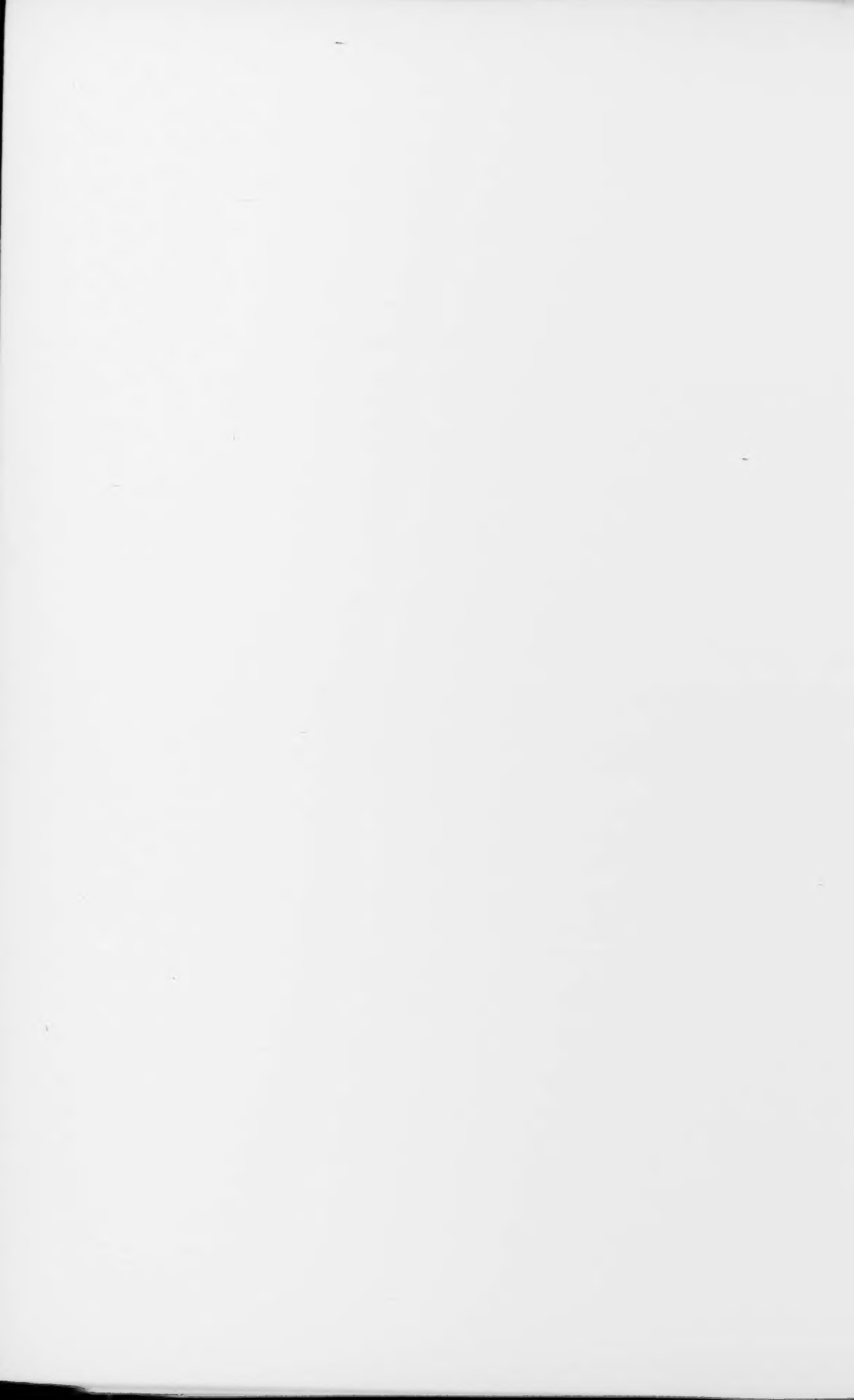
man, in effect, seemed at least to be voting his pocket-

MATTACE: And they realized what had happened, that this
happened.

while everyone tried to figure out exactly what had
there was this sort of quiet that settled over the room

MR. ARNSTEIN: In a heartbeat, he did. And after that,

MATTACE: In other words, Robertson changed his mind.



concerned, if he give you \$20,000, if it is for good dol-

WITTACE: And as far as Joe Tamarr, for instance, is
of influencing me on anything that I'm doing to say
elected to office. It is not accepted for the purpose
to me knows this. That money is accepted to help me get
like it was given to me. Anyone who's ever contributed

Judge MANLY: Because that contribution I took on just

WITTACE: Because;

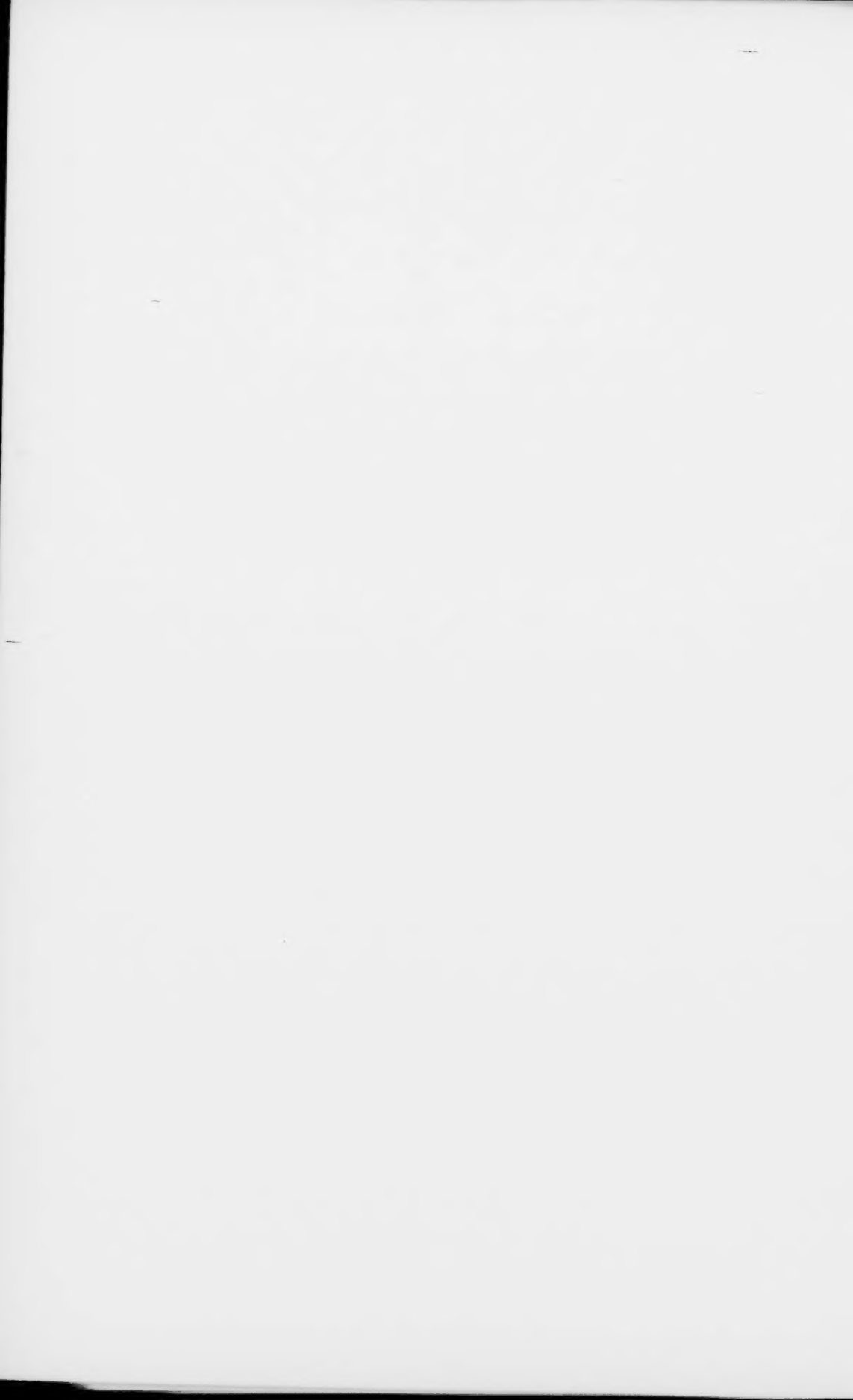
Judge MANLY: No, I wouldn't feel any obligation to
off that case;

feel no obligation to recuse yourself, to take yourself
\$20,000, and he comes before you with a case, do you
and he comes before you, let's say he's given you
almost anybody has given you a paid campaign contribution,

WITTACE: Judge Manly, let's say that Joe Tamarr or
thing that we have to take the initiative and charge.

Sen. LEBEDA: That's the very disgraceful part, and the
under Texas law.

[Interjecting] That fact is, none of this is illegal



Busby McMatins, for instance, who's with Bill Edwards, amount as the lawyers on the Pennzoni side. There's verdict, okay? Have contributed substantially the same what they're really talking about, since the day of the had taken it from--since the time of the appeal, that's

MR. JAMAIL: Texaco's lawyers, the ones that-that-that badm contributions to Texas Supreme Court Justices. had already talked to us about that case and about cam- with us. But, in fact, before putting out, Mr. Jamail he never consented to discuss the Texaco-Pennzoni case him about the story we're reporting. He now suggests writing letters charging 60 minutes with having misled change of heart. And since then, Mr. Jamail has been after our first day of filming with him, he had a to a no-holds-barred interview, no conditions. But

MATTACE [voice-over]: Ordinarily, Joe Jamail had agreed it for.

Judge MAUSZY: Well, you'll have to ask him what he gave

element?



It breaks down confidence.

They focus on that. They wonder why. They get confused. Driven by instincts, be it these two instincts or others. They look and see the amounts of money that's been

JUDGE HILL: I think again that it's perceived by people. Contributed the process;

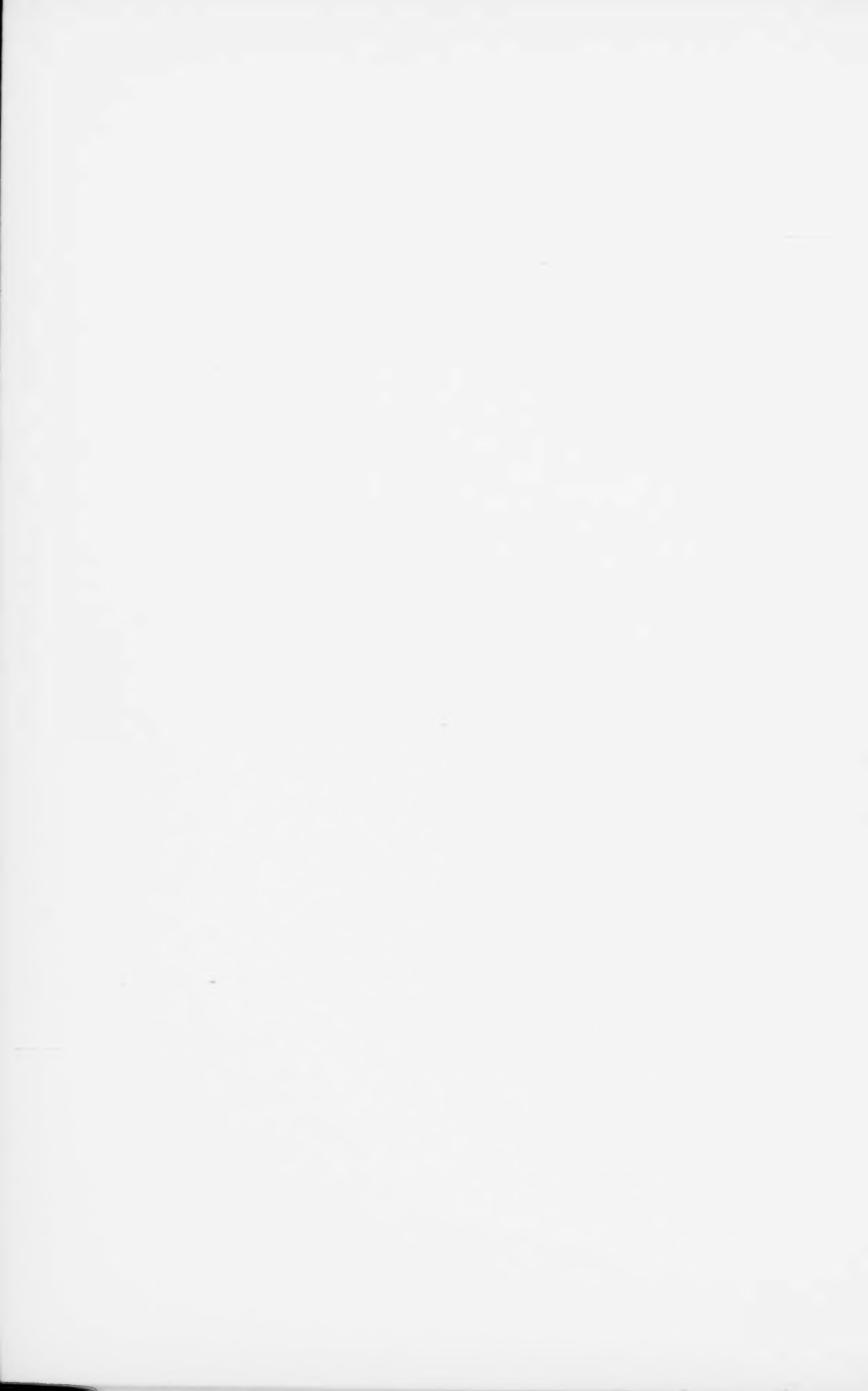
contributed the process; does it not stand a chance of Texas and Pennzoil, to various judges. Does this not has been driven to the variety-town for both sides, both

[Interviewing] Three-quarters of a million dollars Justice of the Texas Supreme Court, John Hill.

almost a three-to-one margin. Again, the sitting Chief Justice and Pennzoil have out-contributed Texaco by But to date, as best as we can tell from the records, sizeable contributions since losing the July trial.

MUTTACE [voice-over]: Texaco's lawyers have indeed made bad. You can check it. It was at least as much.

I think they had contributed more individually than I think when they were in it-they got in it originally.



-e- and end

and Diane Sawyer

Mike Wallace, Morley Safer, Harry Reasoner, Ed Bradley

With CBS News Correspondents

Minutes

20

Number 15

CBS NEWS

Volume XX

(Taken from...)

appear in the United States Supreme Court in Washington.

down Texaco's appeal. Texaco is now preparing a final

WALLACE: On November 5, the Texas Supreme Court turned
side of the other.

since will always be there that it was brought by one

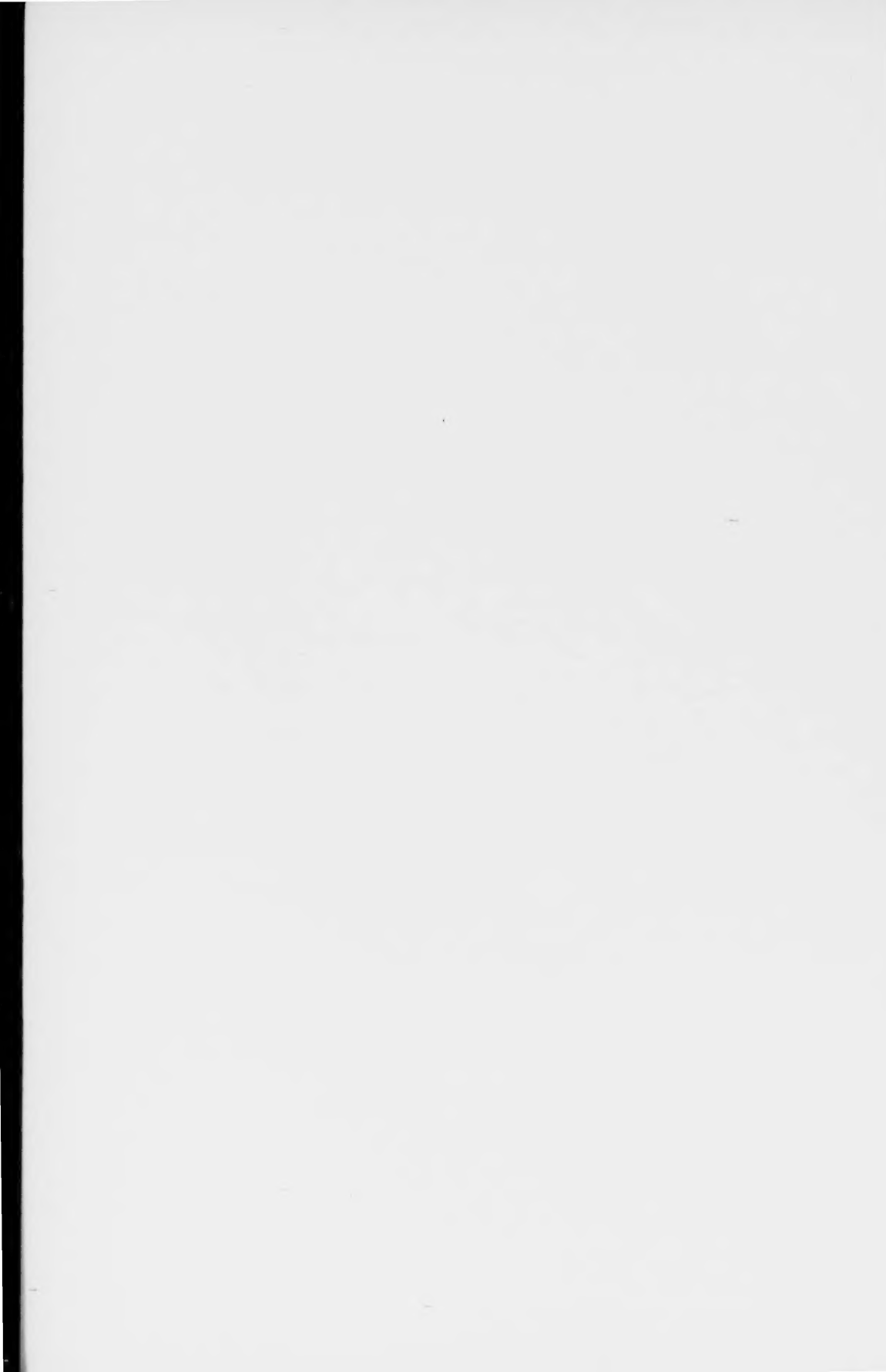
what happens in that case, the perception, the appear-

ingly by Pennzoil attorneys, that I think no matter

tions that have been given by both sides, but particu-

undeservedly, because of the large amount of contribu-

SEN. JEDY: There may be so much fault, deservedly or



MAUSLY.

think about his large campaign contributions to Judge
when we asked him in Corpus Christi what people should
MAITACE [voice-over]: Joe Lamarr was not so circumspect
or any case that's presently pending.

our canons of ethics to discuss any Judge or any lawyer
itself. Please understand, we're not permitted under
Judge MAUSLY: Well, as I say, the report speaks for
friend Joe Lamarr, correct;

and lawyers. Among them, of course, your good personal

MAITACE: And most of them were law firms and individ-

Judge MAUSLY: Okay.

MAITACE: I have.

reports to see--

Judge MAUSLY: I'd have to look at my financial campaign
most of them were lawyers.

MAITACE: But in dollars--of the million and a half,

Judge MAUSLY: Yes.

MAITACE: Of people.



some \$42,000 and was one of a group of lawyers who drafted

WITTACE [voice-over]: Apparently, Tammy gave Judge Mansel
everybody.

I've given to all of the Supreme Court Justices, Congress,
unusually for me. I think that's the same contribution
no--I think it's \$2,000. But you see, that's not

MR. TAMM: I think it was \$22,000. It may have been

Judge Mansel: Twenty-five.

MR. TAMM: I don't remember what it was.

WITTACE: And how much did Tammy give?

And incidentally, he never had to ask.

They would think he would be a fool if he didn't ask.

Effective system. So I don't know what they think.

Just in Texas but every effective state that uses the
and tell me, first off, our laws permit this. And not
only [objective] and native. You know it and I know it.

They don't do to give me campaign contributions. That's
it. You know, it's not do to do to my enemies; we
around as well as anybody. I know what my philosophy

MR. TAMM: Well, who else would help? I know my



the problem in the Pennzoil-Texasco case because of the

MATTACE: Does the Texas Supreme Court have a credibility-
crisis?

I'm just reporting to you what the facts are. Bids is

JUDGE ROBE: Mr. Wallace, I'm not defending the system's
contributions.

kindly on those lawyers who have given them the biggest
indicates, the justices, the judges are doing to look

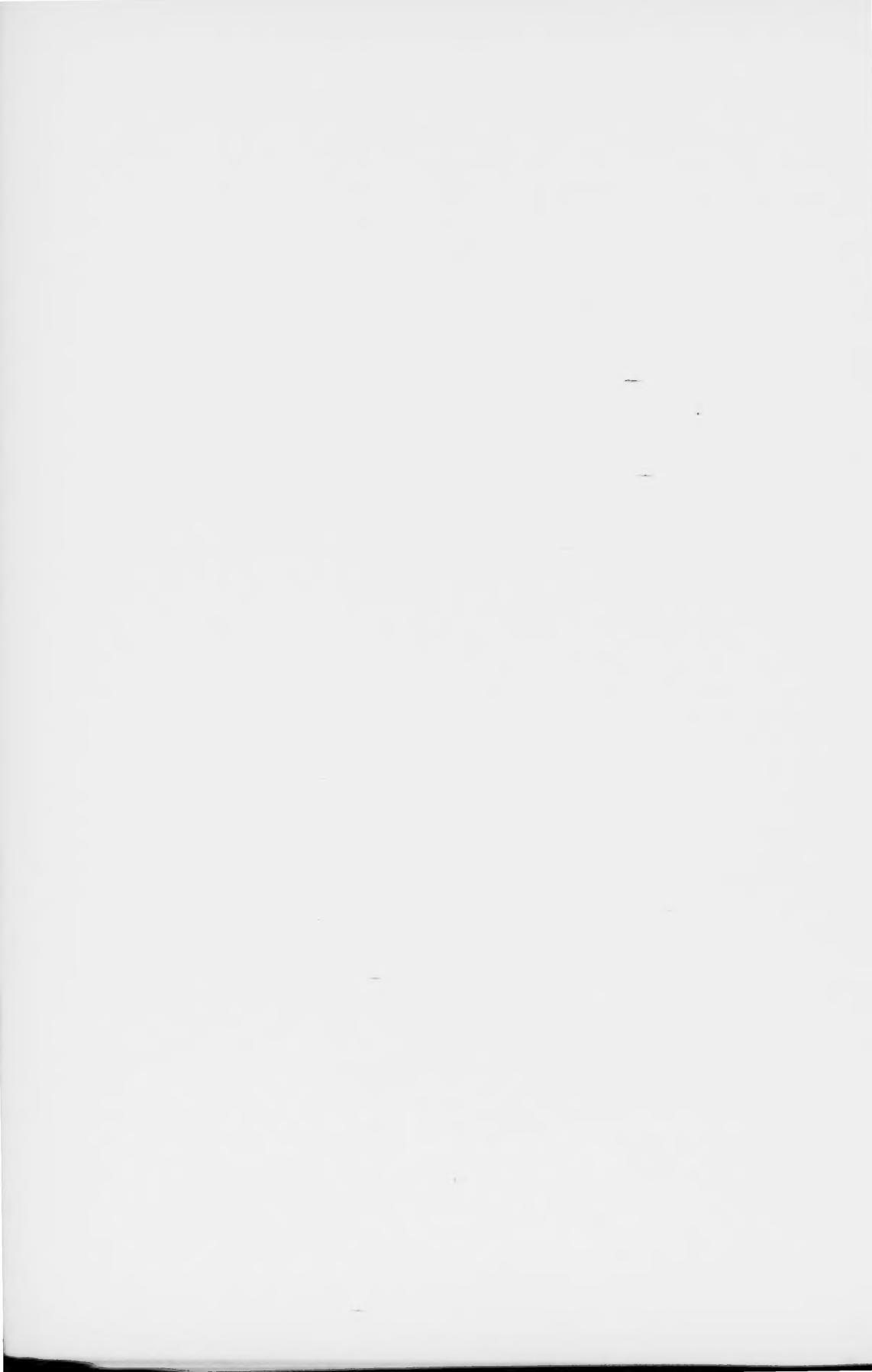
[Interviewing] One would think, that common sense
justice of the Texas Supreme Court three years ago.

MATTACE [voice-over]: Judge Jack Robe retired as chief
of these massive sums of money is wrong.

JUDGE JACK ROBE: I think the dividend and the acceptance
senior, it doing to me doesn't particularly give a damn.
of it, comes from lawyers. Because who else-the client-
a good deal of money. Most of that money, I'd say 85%
know, with television and what have have you requires

MR. LAWSON: To run for statewide office now, as you
secured a \$252,000 loan to the judge.

Judge Fairris successfully argued, to Texaco's astonish-
contributions, attempted to disqualify the Judge. But
Texaco, citing the size, nature and the timing of these
least a thousand dollars apiece to Fairris, campaign.
Just that, soliciting his lawyer friends to help him at
to raise more money. As the case proceeded, Tammy got
from "a princely sum". And he sought Joe Tammy's help
himself, in this letter, called the \$10,000 contribu-
Judge Fairris had been assigned the case. Judge Fairris
ceased Judge Fairris was given just four weeks after
although Fairris. Tammy's contribution to the now-de-
campaign contribution to the original trial Judge,
case, Joe Tammy represented Pennzoil, gave a \$10,000
MATTYACE: Case in court, during the Texaco-Pennzoil
after campaign, I would be worried about the case.
Judge that I knew had been heavily financed in a succes-
walking into the courthouse to try a lawsuit before a
Judge BOBE: Well I am-I am saying that if I were
massive contributions given by lawyers on both sides;



solicitation of funds, other ex parte communications and we're talking about favoritism, free plane rides, conduct toward him directly or indirectly on seven instances.

SEN. FRANK DELEDA: Well, the Commission on Judicial
is man;

[Interviewing] Tell us about C.R. Kay, what kind of the investigation.

Court Justice C.R. Kay. State Senator Frank Deleda led their major campaign contributors, especially Supreme
dation into the relationship of certain justices to
court itself was the object of a legislative investi-
Texas, the Texas Supreme Court. But by this time, the
them down, they moved to the court of last resort in
promptly appeared. And when the appeals court turned
winner of the largest jury verdict in history. Texaco
verdict, Pennzoil and Tamarco emerged victorious, the

[voice-over] When the jury returned its unanimous
Texas for a judge to gradually himself.

ment, that, "were bias or prejudice" is not grounds in



case would be mine.

MR. TAMB: And that if I did not win this case, the next

MATTACE: Right.

before the Supreme Court that he was sitting on.

difficult case, the case that was involved, my case

HENRY J.M. TAMB: He said to me that the case was a
aside at a cocktail party and says to you just what's -

[interjecting] He, the Judge, takes you, Mr. Tamb,
Ray approached him.

his fundraiser in Houston. When Tamb appeared, Judge
clients to bring a thousand dollars each and come to
Ray had sent out invitations to lawyers and their
dollar case pending before the Supreme Court. Justice
Justice Ray. At the time, Tamb had a multi-million-
millionaire Henry J.M. Tamb, at a fundraising event for
encounter between Justice C.G. Ray and this man, Houston

MATTACE[voice-over]: Senator DeLoach is talking about an
with party interests.

with party interests, not only with the attorneys but



many of those attorneys had cases pending at that time solicitation letters to attorneys throughout the state.

SEN. JEFFERY: That's correct. They sent out over 4,000 the state;

around-or asking for contributions from lawyers around for this libel suit by, in effect, quizzing lawyers

[Interviewing] Both Ray and Kijakijiu raised money was to initiate a libel action.

response to the testimony of the court's own law clerks about the misconduct they had witnessed. The judges, of several of the Supreme Court law clerks who testified the State Judicial Commission was based on the testimony and the unprecedented rebuke of two sitting judges by

MATTACE[voice-over]: The investigation of the court the Select Committee in Austin. It's part of the record.

MR. LAUB: Mr. Mattace, I-I reported this under oath to win the next one, in effect;

wasn't sure that you're doing to win this one, but you'd court told a litigant in front of that court that he

MATTACE: Now wait a second. A judge of the supreme

... record with a remarkable record of arrests. And
he is a cop and so is he and so is he. They, the part of
you, I took account for a cop. Well, took no further.
... looking next to him or him or him, chances are

ROBERT GALEY: If you were a New York subway rider and
know it.

What's right [objective] and true. You know it and I
they, the doing to give him combatant contributions;
is. You know, is he doing to do to his enemies and
about as well as anybody. I know what his biography

MR. TAMM: Well, who else would he be? I know him
of a judge who may sit on one of his cases;
a lawyer to contribute money to the election campaign

MIKE MATTACE: It's not illegal but is it ethical for

MR. TAMM: I'm wired up for 60 minutes.

JUDGE ROBERT CAMPBELL: How are you doing?

JOE TAMM: Hello, Judge. How are you?

December 9, 1981

60 MINUTES



(COMMERCIAL BREAK)

and hourly contact on 90 minutes.

DIVINE SAMUEL: I, the Divine Samuel. Those stories and

ED BRADLEY: I, the Ed Bradley.

KEASONEK: I, the Harry Keasonek.

SAFER: I, the Morley Safer.

MATTACE: I, the Mike Mattace.

are aware that there was such a circle of conspiracy.

city and you would find more than a dozen people who

MAYOR TOM BRADLEY: I guess you could do around this

wasn't outside. It was under the conspiracy.

in time. The projects had begun to disappear. It

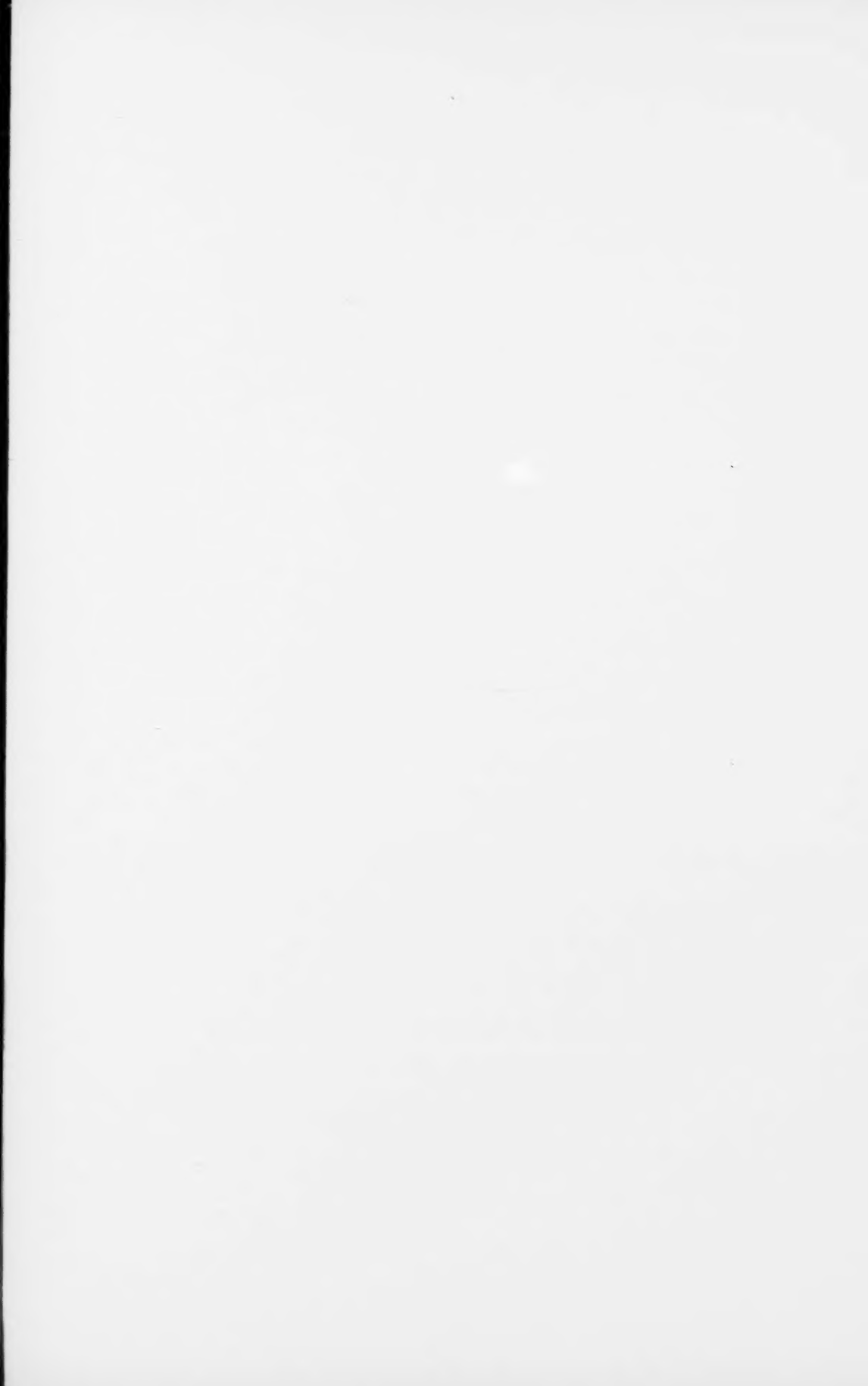
HARRY KEASONEK: And said that in 1944 and just about

project,")

(And saying and and "Stand, stand, stand, the

they, the on they, well they, the not anymore.

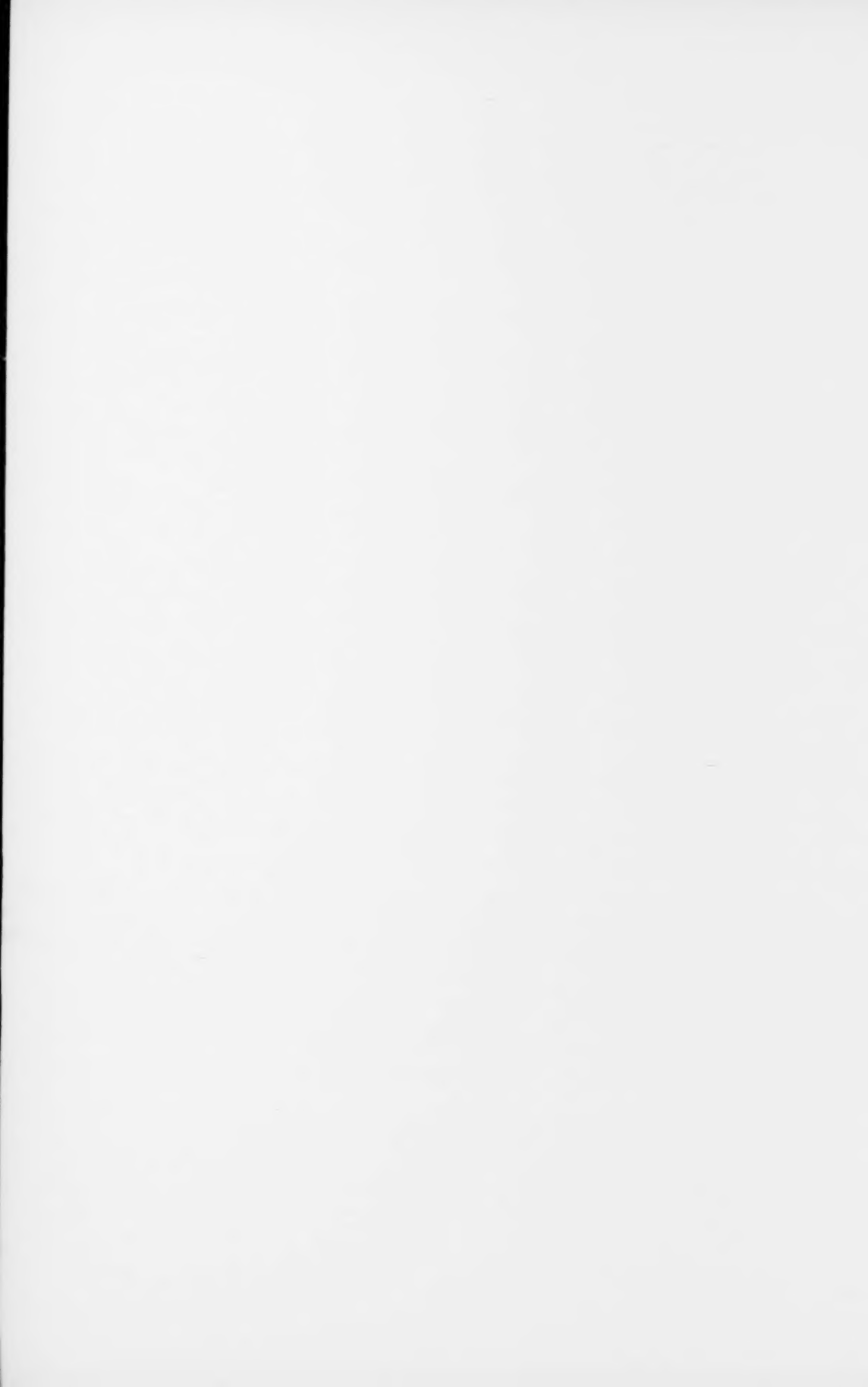
It it makes you feel more comfortable just knowing



[voice-over] One such judge has now decided the
fate the very judges they help elect.

campaign contributors are the lawyers who practice before
are elected to office like politicians, their proudest
stead, it is about the fact that in Texas, where judges
the giant oil companies should have won the case. In-
issue at the heart of the controversy is not which of
stand last month by the Texas Supreme Court. But the
jury rendered against Texaco, a verdict permitted to
the 10 and a half billion dollar verdict that a Houston
parade of criticism; The Texaco-Pennzoil dispute and
coroners in mirrored sundresses." What triggered this
of what passes for justice in small countries can be
ized that the conduct of the Texas courts is "repulsive
national embarrassment." The New York Times editorial-
journal has called the decision of one Texas court "a
recent headlines might make you wonder. The Wall Street
MIKE MATTACE: Is justice for sale in Texas? Some

JUSTICE FOR SALE?



to grander it.

know. It's what I know and it upsets me, and I want
knew what the--the people that study these things do

Judge HILL: This would shock people if they really
system.

and the election of judges and to get money out of the
that he is resigning from the court to lead a fight to
by the perception that money is corrupting Texas Justice
has relied on lawyers, contributions, he is so disturbed

WATKINS: [voice-over] Even though Judge Hill himself
of Texas.

dollars to run a successful race for the Supreme Court
being now where it costs about a million and a half

Judge JOHN HILL: It's outrageous. We--we're for the
money are we talking about?

for, the magnitude of it. Who pays it? How much

[interjecting] Give us a sense of the money fac-
Justice of the Texas Supreme Court, John Hill.

system is just badly wrong. He is the current chief



MR. TAMM: Excuse me, Judge.

temper.

to a conference of Judges in Corpus Christi last September and supreme court justices when we accompanied him during the relationship between contributing law-
one contributors to Judges, campaigns. He gave us a
witness that lawyer, he is also one of the most gener-

MUTTACE [voice over]: Tamm is not only Texas, pro-

1st MAN: Fantastic.

MR. TAMM: How are you?

1st MAN: Fine.

JOE TAMM: What do you think about it all, Judge,
Texas.

and now brings himself on being the man who bankrupted
legendary Texas trial lawyer who represented Pennzoil

MUTTACE: [voice out] Case in point, Joe Tamm, the
court.

Judge HITT: Kindly show lawyers who practice in the

MUTTACE: Where does the money come from?



as a campaign contribution or otherwise.

JUDGE KINGSBURN: Joe hasn't given me any money lately.

Supreme Court Justice William Kingsburn.

WATTAGE [voice-over]: The man I want is talking to is

Judge WILLIAM KINGSBURN: Hi, Joe.

Judge CAMPBELL: All right.

MR. TAVAR: And I, I'm in touch.

contributors.

WATTAGE: That makes him one of Judge Campbell's biggest
to say hello.

MR. TAVAR: I'm wired up for 60 minutes. Just wanted

Judge ROBERT CAMPBELL: How are you doing?

MR. TAVAR: Hello, Judge. How are you?

\$55,200 to Judge Campbell's campaign.

case landed in the Texas courts. Tavar has contributed
Court Justice Robert Campbell. Since the Texas-Pennsylv

WATTAGE [voice-over]: Tavar is referring to Supreme

MR. TAVAR: I want to go see Campbell for a minute.

AND MAN: Yes, sir.



JUDGE MANLY: in numbers, that's right.

MATTACE: in numbers.

known me a long time and--

we last year were not lawyers. They were people who, we believed that over half the people that contributed to lawsuits somewhere who may have a private grant. I, as every individual to find out. There may be some indi-

JUDGE MANLY: well, I think you would have to talk to estate in good government, in good justice here in Texas;

[interjecting] and so the lawyers are just the proudest campaign contributors is Joe Lamarr.

was Supreme Court Justice Oscar Manly, one of whose

MATTACE[voice-over]: The next Judge Lamarr spoke to

JUDGE OSCAR MANLY: Your eminence.

Longest away for a minute.

MR. LAMARR: I'd like to say hello to you court fear for his campaign.

this year. But last year, Lamarr gave the Judge \$1,000

MATTACE: [voice-over]: and that may still be the case